

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5

6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 :
13

14 - HIGHLY CONFIDENTIAL -

15 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

16 VOLUME II
17 - - -
18

19 April 18, 2019
20 - - -
21

22 Continued videotaped
23 deposition of THOMAS PREVOZNIK, taken
24 pursuant to notice, was held at the law
 offices of Williams & Connolly, 725 12th
 Street, Washington, D.C., beginning at
 8:16 a.m., on the above date, before
 Michelle L. Gray, a Registered
 Professional Reporter, Certified
 Shorthand Reporter, Certified Realtime
 Reporter, and Notary Public.

25 - - -
26 GOLKOW LITIGATION SERVICES

27 877.370.3377 ph | 917.591.5672 fax
28 deps@golkow.com
29

1 APPEARANCES:

2

3 GREENE, KETCHUM, FARRELL, BAILEY & TWEEL LLP
4 PAUL T. FARRELL, JR., ESQ.

5 419 Eleventh Street
6 Huntington, WV 25701

7 (304) 521-4778
8 Paul@greeneketchum.com

9 - and -

10 MCHUGH & FULLER

11 BY: MICHAEL J. FULLER, ESQ.

12 97 Elias Whiddon Road
13 Hattiesburg, Mississippi 39402

14 (800) 939-5580
15 mike@mchughfuller.com

16

17 - and -

18

19 MOTLEY RICE, LLC

20 BY: LINDA SINGER, ESQ.

21 401 9th Street, NW, Suite 1001

22 Washington, D.C. 20004

23 (202) 386-9626

24 Lsinger@motleyrice.com

Representing the Plaintiffs

25

26 - and -

27

28 THE DUGAN LAW FIRM

29 BY: BONNIE A. KENDRICK, ESQ.

30 One Canal Place

31 365 Canal Place, Suite 1000

32 New Orleans, Louisiana 70130

33 (504) 648-0180

34 bonnie@dugan-lawfirm.com

35 Representing the Plaintiffs

36

37

38

39

1 APPEARANCES: (Cont'd.)
2 US DEPARTMENT OF JUSTICE
BY: DAVID FINKELSTEIN, ESQ.
3 BY: NATALIE A. WAITES, ESQ.
175 N Street, NE, Room 10-2222
4 Washington, DC 20002
(202) 616-2964
5 david.m.finkelstein@usdoj.gov
natalie.a.waites@usdoj.gov

6
7

- and -

8
US DEPARTMENT OF JUSTICE
9 BY: JAMES R. BENNETT, II, ESQ.
United States Courthouse
10 801 West Superior Avenue
Suite 400
11 Cleveland, Ohio 44113
(216) 622-3988
12 James.bennett4@usdoj.gov

13

- and -

14 US DEPARTMENT OF JUSTICE
BY: MARIAMA C. SPEARS, ESQ.
15 8701 Morrisette Drive
Springfield, Virginia 22152
16 (202) 598-6204
Mariama.c.spears@usdoj.gov
17 Representing the US DOJ

18
19
20
21
22
23
24

1 APPEARANCES: (Cont'd.)

2

WILLIAMS & CONNOLLY, LLP

3 By: ENU MAINIGI, ESQ.

BY: COLLEEN MCNAMARA, ESQ.

4 BY: BRAD MASTERS, ESQ.

BY: JENNIFER G. WICHT, ESQ.

5 725 12th Street, NW

Washington, D.C. 20005

6 (202) 434-5148

emainigi@wc.com

7 cmcnamara@wc.com

Bmasters@wc.com

8 Jwicht@wc.com

Representing the Defendant, Cardinal
9 Health

10

11 BARTLIT BECK LLP

BY: LESTER C. HOUTZ, ESQ.

12 1801 Wewatta Street, Suite 1200

Denver, Colorado 80202

13 (303) 592-3199

lester.houtz@bartlit-beck.com

14 Representing the Defendant, Walgreens

15

ROPES & GRAY LLP

16 BY: ANDREW O'CONNOR, ESQ.

BY: JOSHUA E. GOLDSTEIN, ESQ.

17 800 Boylston Street

Boston, Massachusetts 02199

18 (617) 951-7234

Andrew.o'connor@ropesgray.com

19 Joshua.goldstein@ropesgray.com

Representing the Defendant, Mallinckrodt

20

21

22

23

24

1 APPEARANCES: (Cont'd.)

2

3 DECHERT, LLP

BY: JENNA C. NEWMARK, ESQ

4 1095 Avenue of the Americas

New York, New York 10036

5 (212) 698-3500

Jenna.newmark@dechert.com

6 Representing the Defendant, Purdue

Pharmaceuticals

7

8 MARCUS & SHAPIRA, LLP

BY: JOSHUA A. KOBRIN, ESQ.

9 One Oxford Centre, 35th Floor

Pittsburgh, Pennsylvania 15219

10 (412) 338-3990

Kobrin@marcus-shapira.com

11 Representing the Defendant, HBC

Service Company

12

13 ZUCKERMAN SPAEDER, LLP

BY: R. MILES CLARK, ESQ.

14 1800 M. Street NW, Suite 1000

Washington, D.C. 20036

15 (202) 778-1845

Mclark@zuckerman.com

16 Representing the Defendant, CVS

17

REED SMITH, LLP

18 BY: ROBERT A. NICHOLAS, ESQ.

BY: JOSEPH J. MAHADY, ESQ.

19 Three Logan Square

1717 Arch Street, Suite 3100

20 Philadelphia, Pennsylvania 19103

(215) 851-8226

21 rnicholas@reedsmith.com

Jmahady@reedsmith.com

22 Representing the Defendant,

AmerisourceBergen Drug Corporation

23

24

1 APPEARANCES: (Cont'd.)

2

3 MORGAN LEWIS & BOCKIUS, LLP

BY: JOHN P. LAVELLE, JR., ESQ.

4 1701 Market Street

Philadelphia, Pennsylvania 19103

5 (215) 963-4824

John.lavelle@morganlewis.com

6 Representing the Defendant, Rite Aid
Corporation

7

8 FOLEY & LARDNER, LLP

BY: KRISTINA J. MATIC, ESQ.

9 777 East Wisconsin Avenue

Milwaukee, Wisconsin 53202

10 (414) 297-5913

kmatic@foley.com

11 Representing Actavis Laboratories

UT, Inc., Actavis Pharma, Inc.,

12 ANDA, Inc., and Actavis, Inc.,

(N/k/a Allergan Finance, LLC, Watson
Laboratories, Inc.

14

KIRKLAND & ELLIS, LLP

15 BY: JENNIFER G. LEVY, ESQ.

1301 Pennsylvania Avenue, N.W.

16 Washington, D.C. 20004

(202) 879-5211

17 Jennifer.levy@kirkland.com

18 - and -

19 KIRKLAND & ELLIS, LLP

BY: KAITLYN COVERSTONE, ESQ.

20 300 North LaSalle Street

Chicago, Illinois 60654

21 (312) 862-7184

Kaitlyn.coverstone@kirkland.com

22 Representing the Defendant, Allergan

23

24

1 APPEARANCES: (Cont'd.)

2

3 COVINGTON & BURLING, LLP
4 BY: CHRISTOPHER K. EPPICH, ESQ.
5 1999 Avenue of the Stars
6 Los Angeles, California 90067
7 (424) 332-4764
8 Ceppich@cov.com

9

- and -

10

11 COVINGTON & BURLING, LLP
12 BY: KEVIN KELLY, ESQ.
13 850 Tenth Street, NW
14 Suite 586N
15 Washington, D.C. 20001
16 (202) 662-5613
17 Kkelly@cov.com

18

- and -

19

20 COVINGTON & BURLING, LLP
21 BY: MEGHAN E. MONAGHAN, ESQ.
22 850 Tenth Street, NW
23 Suite 586N
24 Washington, D.C. 20001
mmonaghan@cov.com
(202) 662-5110
Representing the Defendant, McKesson
Corporation

25

26 JONES DAY
27 BY: NEAL J. STEPHENS, ESQ.
28 1755 Embarcadero Road
29 Palo Alto, California 94303
30 (650) 739-3939
31 Nstephens@jonesday.com
32 Representing the Defendant, Walmart

33

34

1 APPEARANCES: (Cont'd.)

2

BARNES & THORNBURG, LLP

3 BY: WILLIAM E. PADGETT, ESQ.

11 South Meridian Street

4 Indianapolis, Indiana 46204

(317) 236-1313

5 william.padgett@btlaw.com

Representing the Defendant, H.D. Smith

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 TELEPHONIC/STREAMING APPEARANCES:
2

3 LEVIN PAPANTONIO, P.A.
4 BY: PETER MOUGEY, ESQ.
5 316 Baylen Street
6 Pensacola, Florida 32502
7 (850) 435-7000
8 pmougey@levinlaw.com

9 - and -

10 BARON & BUDD, P.C.
11 BY: STERLING CLUFF, ESQ.
12 Encino Plaza
13 15910 Ventura Boulevard,
14 Suite 1600
15 Encino, California 91436
16 (818) 839-2333
17 Scluff@baronbudd.com

18 - and -
19

20 BARON & BUDD, P.C.
21 BY: WILLIAM G. POWERS, ESQ.
22 600 New Hampshire Avenue, NW
23 The Watergate, Suite 10-A
24 Washington, D.C. 20037
(202) 333-4562
Wpowers@baronbudd.com

25 - and -
26

27 BARON & BUDD, P.C.
28 BY: THOMAS SIMS, ESQ.
29 The Centrum
30 3102 Oak Lawn Avenue, Suite 1100
31 Dallas, Texas 75219
32 (214) 521-3605
33 Tsims@baronbudd.com
34 Representing the Plaintiffs

1 TELEPHONIC/STREAMING APPEARANCES:
(Cont'd.)

2

3 MOTLEY RICE, LLC
BY: AMANDA UNTERREINER, ESQ.
4 401 9th Street, NW,
Suite 1001
5 Washington, D.C. 20004
(202) 386-9626
6 aunterreiner@motleyrice.com
Representing the Plaintiffs

7

8 ARNOLD PORTER KAYE SCHOLER, LLP
BY: JOSHUA M. DAVIS, ESQ.
9 601 Massachusetts Avenue, NW
Washington, DC 20001
10 (202) 942-5000
Joshua.davis@arnoldporter.com
11 Representing the Defendants, Endo Health
Solutions Endo Pharmaceuticals, Inc.; Par
12 Pharmaceutical Companies, Inc. f/k/a Par
Pharmaceutical Holdings, Inc.

13

14 REED SMITH, LLP
BY: SHANNON E. McCLURE, ESQ.
15 Three Logan Square
1717 Arch Street, Suite 3100
16 Philadelphia, Pennsylvania 19103
(215) 851-8226
17 smcclure@reedsmith.com
Representing the Defendant,
18 AmerisourceBergen Drug Corporation

19

CAVITCH FAMILO & DURKIN, CO., L.P.A.
20 BY: ERIC J. WEISS, ESQ.
1300 E. 9th Street
21 Cleveland, Ohio 44114
(216) 621-7860
22 Eweiss@cavitch.com
Representing the Defendant, Discount Drug
23 Mart

24

1 TELEPHONIC/STREAMING APPEARANCES:
(Cont'd.)

2

3 MORGAN LEWIS & BOCKIUS, LLP

BY: LATIERA RAYFORD, ESQ.

4 BY: ZACHARY R. LAZAR, ESQ.

77 West Wacker Drive

5 Chicago, Illinois 60601

(312) 324-1481

6 Latiera.rayford@morganlewis.com

Zachary.lazar@morganlewis.com

7 Teva Pharmaceuticals, Inc. Cephalon Inc,

Watson Laboratories, Actavis LLC, Actavis

8 Pharma, Inc.

9

BAILEY & WYANT P.L.L.C.

10 BY: HARRISON M. CYRUS, ESQ.

500 Virginia Street East

11 Suite 600

Charleston, West Virginia 25301

12 (304) 345-4222

Hcyrus@baileywyant.com

13 Representing the Defendant, West

Virginia Board of Pharmacy

14

15 FOX ROTHSCHILD, LLP

BY: ZACHARY MARTIN, ESQ.

16 2700 Kelly Road

Suite 300

17 Warrington, Pennsylvania 18976

(215) 918-3680

18 Zmartin@foxrothschild.com

Representing the Defendant, Prescription

19 Supply Inc.

20

JONES DAY

21 BY: PATRICK J. BEISELL, ESQ.

77 West Wacker

22 Chicago, Illinois 60601

(312) 269-4066

23 Pbeisell@jonesday.com

Representing the Defendant, Walmart

24

1 TELEPHONIC/STREAMING APPEARANCES:
(Cont'd.)

2
3 VENABLE, LLP

BY: JAMES K. O'CONNOR, ESQ.

4 750 E. Pratt Street, Suite 900

Baltimore, Maryland 21202

5 (410) 244-7742

Jko'connor@venable.com

6 Representing the Defendant, Abbott
Laboratories and Abbott Laboratories,
7 Inc.

8

LOCKE LORD, LLP

9 BY: MADELEINE E. BRUNNER, ESQ.

2200 Ross Avenue

10 Suite 2800

Dallas, Texas 75201

11 (214) 740.8758

Maddie.brunner@lockelord.com

12 Representing the Defendant,
Henry Schein, Inc.

13

14 O'MELVENY & MYERS, LLP

BY: EMILIE K. WINCKEL, ESQ.

15 1625 Eye Street, NW

Washington, D.C. 20006

16 (202) 383-5300

Ewinckel@omm.com

17 Representing the Defendants, Janssen and
Johnson & Johnson

18

19

20

21

22

23

24

1 APPEARANCES: (Cont'd.)

2

3 ALSO PRESENT:

4

Kaitlyn Eekhoff - Paralegal

5 (Via telephone)

(Motley Rice)

6

Jenna Forster - Paralegal

7 (Motley Rice)

8

9 VIDEOTAPE TECHNICIAN:

Chris Ritona

10

11 LITIGATION TECHNICIAN:

John Knowles

12

13

14

15

16

17

18

19

20

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22

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2 I N D E X
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6 THOMAS PREVOZNIK

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None.

1 - - -

2 THE VIDEOGRAPHER: Good
3 morning. Today is April 18, 2019,
4 8:15 a.m., and this is the
5 continuation of the deposition of
6 Thomas Prevoznik.

7 - - -

8 ... THOMAS PREVOZNIK, having
9 been previously sworn, was
10 examined and testified as follows:

11 - - -

12 THE VIDEOGRAPHER: I
13 apologize. We need to go off the
14 record. 8:16. We are off the
15 video record.

16 (Brief pause.)

17 THE VIDEOGRAPHER: 8:18, we
18 are on the video record.

19 - - -

20 EXAMINATION

21 (Continued)

22 - - -

23 BY MR. STEPHENS:

24 Q. Mr. Prevoznik, good morning.

1 A. Good morning.

2 Q. Let me introduce myself.

3 I'm Neal Stephens.

4 MR. FINKELSTEIN: Guys.

5 BY MR. STEPHENS:

6 Q. I represent Jones Day, and
7 I'm asking you questions on behalf of the
8 retail pharmacies. You remember that
9 from yesterday, right?

10 A. Yes, I do.

11 Q. Okay. So let me -- let me
12 go back to where we were yesterday. And
13 we were talking through --

14 A. Could I just clarify
15 something from yesterday, please?

16 Q. Sure.

17 A. Okay. First of all I want
18 to thank everybody for allowing me to try
19 to catch my train. Of course with DC
20 around here, my train was delayed. And
21 while I was delayed, I went to our
22 website because I was reflecting on my
23 testimony earlier.

24 And one of the things that

1 came up was guidance as well as
2 conferences. And I know I didn't mention
3 the conferences and the dates. So I just
4 went to our website. And on our website
5 we do have meetings and it has past
6 meetings. So I just looked on there. I
7 want to be able to say that in 2007 and
8 2009, '7 was in Houston, 2009 was in
9 Oregon, Portland.

10 Those were pharmaceutical
11 industry conferences. That was
12 wholesalers, distributors, some
13 importers. So those conferences were
14 there.

15 And then somehow I
16 completely forgot about the
17 manufacturers, importers, and exporter
18 conferences that were in '13 and '15, in
19 particular the '15 one because I actually
20 gave a presentation. So I apologize for
21 that. But I just wanted to clarify that.

22 Q. Where was the location of
23 the 2013 conference?

24 A. The manufacturers?

1 Q. Correct.

2 A. Both were Inner Harbor in
3 Maryland.

4 Q. Okay. And the 2015 was in
5 Maryland as well?

6 A. Yes.

7 Q. All right. Thank you for
8 that.

9 And if I could,
10 Mr. Prevoznik, I'd like to go back to
11 where I ended last evening and pick back
12 up there again today. I just have a few
13 predicate questions to ask you before we
14 go back into it. Okay.

15 A. Yes.

16 Q. All right. We were talking
17 through Topic 2 and Topic 3 of your
18 30(b)(6) designation. And would you
19 agree that who is diverting in the
20 marketplace is relevant to how someone is
21 designing their SOMs program?

22 MR. FINKELSTEIN: Objection.

23 Vague.

24 THE WITNESS: Could you

1 expand on --

2 BY MR. STEPHENS:

3 Q. DEA looks to where diversion
4 is occurring in the United States, right?

5 A. Correct.

6 Q. Where it's happening in the
7 marketplace?

8 A. Correct.

9 Q. Okay. My point is when
10 you're designing a SOMs system, it's
11 relevant where diversion is occurring as
12 to how you develop your SOMs system,
13 right?

14 MR. FINKELSTEIN: Objection.
15 Vague.

16 THE WITNESS: Well, within
17 the closed system of distribution,
18 the whole -- the whole point of
19 the system is to have effective
20 means to guard against diversion.
21 So each -- it's all
22 interconnected.

23 So I don't want to say one
24 is more important than the other

1 one because each step affects the
2 next step --

3 BY MR. STEPHENS:

4 Q. Okay, but.

5 A. -- in either direction.

6 Q. Okay. Sorry. I didn't mean
7 to interrupt you there.

8 Would you agree that to --
9 and these are just predicate questions.
10 To assess if an order is suspicious, it's
11 relevant where the shipping is going?

12 A. That's -- yeah.

13 Q. Okay.

14 A. That's one of -- yes.

15 That's one of the --

16 Q. Not the only criteria --

17 A. Right. That's one of them.

18 Q. -- it's one of them.

19 Okay. So if it's relevant
20 where it's going, where diversion is
21 occurring in the marketplace is relevant,
22 right? One characteristic of relevance?

23 A. Yes.

24 Q. Yes, okay. That's the only

1 point I'm trying to make.

2 A. Okay.

3 Q. All right. So I would then
4 like to continue asking you questions
5 about DEA's interpretation and
6 enforcement of the Controlled Substances
7 Act and the relevant regulations and how
8 that relates to the design of a
9 reasonable SOMs system. Okay?

10 A. Okay.

11 Q. All right. Now, yesterday
12 when we stopped, I believe we had just
13 referred to Exhibit 14, which was
14 statements that Mr. Rannazzisi had made
15 to Congress about 99.5 percent of the
16 prescribers not overprescribing. Do you
17 recall that testimony?

18 A. Yes.

19 Q. Okay. That testimony
20 occurred in 2014, right?

21 A. Yes.

22 Q. Okay. Now, more recently,
23 in 2018, Mr. Patterson testified in front
24 of Congress that 99.9 percent of doctors

1 are all trying to do right by their
2 patients. Are you familiar with that?

3 A. Could I see the testimony?

4 Q. Sure.

5 (Document marked for
6 identification as Exhibit
7 DEA-Prevoznik-15.)

8 BY MR. STEPHENS:

9 Q. Mr. Prevoznik, I marked as
10 Exhibit Number 15 a hearing dated May 8,
11 2018, entitled "Challenges and Solutions
12 in the Opioid Crisis" before the
13 Committee of the Judiciary, House of
14 Representatives. I would direct you to
15 Page 32.

16 If you look at the top of
17 32, there's a paragraph that indicates
18 that Mr. Patterson is talking.

19 A. Correct.

20 Q. Do you see that?

21 A. Yes.

22 Q. Now, Robert Patterson in
23 2018 was the director -- I'm sorry, the
24 administrator of DEA?

1 A. Acting administrator.

2 Q. Acting administrator.

3 A. Right.

4 Q. It's the number one position
5 at DEA?

6 A. Correct.

7 Q. Okay. So here Mr. Patterson
8 was asked a question, and in part of his
9 response he says, "But I go back to the
10 fact that I look at the vast majority of
11 doctors, 99.99 percent are all trying to
12 do right by their patients."

13 Do you see that?

14 A. Correct.

15 Q. Did I read that accurately?

16 A. Yes.

17 Q. Okay. DEA agrees, as of
18 2018, that 99.9 percent of doctors are
19 all trying to do right by their patients,
20 right?

21 MR. FINKELSTEIN: Scope.

22 THE WITNESS: I don't -- I
23 mean, he's stated that, but I
24 don't think it's a static number.

1 So I mean, I think -- it will
2 fluctuate depending on what a
3 prescriber eventually does.

4 BY MR. STEPHENS:

5 Q. Okay. As of --

6 A. As of that date, that's what
7 was said, yes.

8 Q. Okay. He was the number one
9 person at DEA when he made that
10 statement, right?

11 A. Right.

12 MR. FINKELSTEIN: Asked and
13 answered.

14 MR. FARRELL: Excuse me.
15 Could you please repeat the
16 exhibit number?

17 MR. STEPHENS: Sure. That's
18 number 15, Paul.

19 MR. FINKELSTEIN: And wait
20 for my objections.

21 BY MR. STEPHENS:

22 Q. Mr. Prevoznik, if
23 99.99 percent of prescribers acted
24 appropriately, the diversion problems DEA

1 confronts are generated by the remaining
2 one-tenth of 1 percent of the
3 prescribers?

4 MR. FINKELSTEIN: Objection.
5 Foundation. Mischaracterizes
6 prior testimony.

7 THE WITNESS: If you go with
8 that number, yes, that's correct.

9 BY MR. STEPHENS:

10 Q. Okay. DEA currently has
11 more than 1.7 million registrants?

12 A. Correct.

13 Q. Okay. And as you recall
14 yesterday, we talked about prescribing
15 doctors being registrants, right?

16 A. Yes.

17 Q. Okay. You would agree --

18 MR. FINKELSTEIN: I'm sorry.
19 Can I just interrupt for one
20 second. Your -- the softness of
21 your answer is creating problems
22 for the transcript. I just
23 noticed. Please speak louder.

24 THE WITNESS: Okay. Sorry.

1 BY MR. STEPHENS:

2 Q. All right. You would agree
3 that not all registrants distributed
4 controlled substances to the one-tenth
5 of 1 percent of the prescribers who
6 diverted opioids from 1998 to present?

7 MR. FINKELSTEIN: Objection.
8 Scope. Foundation.
9 Mischaracterizes prior testimony.

10 THE WITNESS: I'm sorry.
11 Could you repeat?

12 BY MR. STEPHENS:

13 Q. Sure. So we're talking
14 about the one-tenth of 1 percent, right,
15 of prescribers?

16 A. Right.

17 Q. Okay. You would agree that
18 not all registrants distributed
19 controlled substances to the one-tenth of
20 1 percent of prescribers who diverted
21 opioids?

22 MR. FINKELSTEIN: Same
23 objections.

24 THE WITNESS: What was the

1 time frame?

2 BY MR. STEPHENS:

3 Q. 1998 to present.

4 A. This statement was in 2018.

5 So the percentage -- the percentage would
6 have been different of that.

7 Q. Do you have --

8 MR. FINKELSTEIN: Tom, a
9 little louder.

10 THE WITNESS: Okay. You're
11 asking me from 1998 forward, and
12 this statement was made May 8,
13 2018.

14 BY MR. STEPHENS:

15 Q. All right.

16 A. So the percentage -- that
17 number would not be 99.99 percent.

18 Again, it's not a static number that goes
19 year to year.

20 Q. In 2014, Mr. Rannazzisi
21 estimated 99.5 percent, right?

22 A. Correct.

23 MR. FINKELSTEIN:

24 Foundation. Mischaracterizes

1 prior testimony. Scope.

2 You can answer.

3 THE WITNESS: Correct.

4 BY MR. STEPHENS:

5 Q. That's one-half of one
6 percent, right?

7 A. Correct.

8 Q. 2018, Mr. Patterson said
9 99.99 percent.

10 MR. FINKELSTEIN: Asked and
11 answered.

12 BY MR. STEPHENS:

13 Q. That's one-tenth of 1
14 percent, right?

15 MR. FINKELSTEIN: Asked and
16 answered.

17 You can answer again.

18 THE WITNESS: Correct.

19 BY MR. STEPHENS:

20 Q. Okay. Do you have a number
21 from 2005?

22 MR. FINKELSTEIN: Objection.
23 Scope. You can answer if you
24 know.

1 THE WITNESS: I don't know.

2 BY MR. STEPHENS:

3 Q. Okay. Do you have a number
4 from 1998?

5 MR. FINKELSTEIN: Objection.
6 Scope. You can answer if you
7 know.

8 THE WITNESS: I don't know.

9 BY MR. STEPHENS:

10 Q. Okay. Do you have any basis
11 to say that it's less than 99 percent of
12 prescribers?

13 MR. FINKELSTEIN: Objection.
14 Scope.

15 Counsel, do you have any
16 questions within the scope of this
17 notice?

18 MR. STEPHENS: I've already
19 established that they are within
20 the scope.

21 MR. FINKELSTEIN: We
22 disagree. We'll let this continue
23 a little bit longer.

24 You can answer if you know.

1 THE WITNESS: With the
2 pharmacy diversion awareness
3 conferences, I was with
4 Mr. Rannazzisi at those
5 conferences. And when we did the
6 presentation, so that was from --
7 when I joined -- when I went to
8 headquarters in April 2012,
9 Atlanta was the first PDAC that I
10 went to. So from that point on,
11 pretty much every time that we had
12 a presentation, we would say 1 to
13 2 percent. So that is the figure
14 that I know of, 1 to 2 percent.

15 BY MR. STEPHENS:

16 Q. Okay. Would you agree then
17 that not all registrants distributed
18 controlled substance to the 1 or
19 2 percent of prescribers who diverted
20 opioids from 2005 to 2018?

21 MR. FINKELSTEIN: Objection.
22 Scope.

23 THE WITNESS: I believe I'd
24 be speculating, but -- I would be

1 speculating on that, but, yes.

2 BY MR. STEPHENS:

3 Q. Okay. I'd like to continue
4 by asking you some additional questions
5 about interpretation enforcement of
6 Title 21 U.S.C. 23, the regulations and
7 how those relate to the design of a
8 reasonable SOMs system. Okay?

9 A. Yes.

10 Q. Okay. So yesterday you --
11 you testified about different
12 distributors having different business
13 models, right?

14 A. Correct.

15 MR. FINKELSTEIN: Objection.

16 Scope. Characterization.

17 BY MR. STEPHENS:

18 Q. Is it fair to say that a
19 SOMs systems is not a one-size-all
20 proposition, one-size-fits-all
21 proposition?

22 A. Correct.

23 Q. And DEA understands that not
24 all registrants distribute opioids to the

1 same customers, right?

2 A. Correct.

3 Q. DEA understands that
4 registrants have different business
5 models?

6 A. Correct.

7 Q. And DEA expects that each
8 registrant will review its own business
9 model and design a SOM system that fits
10 its specific method of distribution?

11 MR. FINKELSTEIN: Objection.
12 Vague.

13 THE WITNESS: That's correct
14 as -- as per the regulations.

15 BY MR. STEPHENS:

16 Q. Okay. Some registrants
17 distribute to hospitals?

18 A. Correct.

19 Q. Some don't?

20 A. Correct.

21 Q. Some registrants distribute
22 to hospice centers?

23 A. Correct.

24 Q. Some don't?

1 A. Correct.

2 Q. Some registrant distribute
3 to independent pharmacies that the
4 registrants do not own?

5 A. Correct.

6 Q. Some registrants, like
7 retail chain pharmacies, do not
8 distribute to independent pharmacies that
9 they do not own?

10 A. I don't know if I completely
11 agree with that. Because you can have --
12 you could have a -- a
13 registrant-to-registrant sale of -- a
14 distribution from a chain store to an
15 independent store. You can do it. So I
16 can't say carte blanche that that
17 doesn't -- hasn't occurred or -- I just
18 can't say that --

19 Q. Okay.

20 A. -- because that's not an
21 ARCOS reportable transaction.

22 Q. So let -- let me follow up
23 with a different question. Come at it
24 this way.

1 Retail chain pharmacies
2 commonly use a self-distributing model
3 where they distribute to chain pharmacy
4 locations that they own.

5 MR. FINKELSTEIN: Objection.
6 Scope. Answer if you know.

7 THE WITNESS: Some do, and
8 some have changed.

9 BY MR. STEPHENS:

10 Q. Okay. For example,
11 Walmart's distribution centers only
12 distributed to Walmart pharmacies at
13 Walmart store locations?

14 MS. SINGER: Objection.

15 MR. FINKELSTEIN: Objection.
16 Scope. Calls for speculation.

17 THE WITNESS: That was
18 correct, yes.

19 BY MR. STEPHENS:

20 Q. All right. I'd like to ask
21 you some questions about Topic 3 related
22 to the guidance that DEA provides
23 regarding the adequacy of SOM systems.

24 Okay?

1 A. Yes.

2 Q. All right. DEA expected
3 that each registrant would take
4 reasonable steps to avoid shipping
5 prescription opioids to individuals who
6 would divert the controlled substances?

7 A. Is that a question?

8 Q. Yes.

9 A. I thought it was a
10 statement. Yes.

11 Q. All right. Let me show you
12 Exhibit 16 which will be the dear
13 registrant letter dated September 27,
14 2006.

15 (Document marked for
16 identification as Exhibit
17 DEA-Prevoznik-16.)

18 BY MR. STEPHENS:

19 Q. Mr. Prevoznik, you're
20 familiar with Exhibit Number 16, correct?

21 A. Correct.

22 Q. All right. I direct your
23 attention, do you see on the first page
24 where it says background?

1 A. Yes.

2 Q. I would direct you to the
3 second paragraph. And the first sentence
4 says, "The CSA was designed by Congress
5 to combat diversion by providing for a
6 closed system of drug distribution in
7 which all legitimate handlers of
8 controlled substances must obtain a DEA
9 registration, and, as a condition of
10 maintaining such registration, must take
11 reasonable steps to ensure that the
12 registration is not being utilized as a
13 source of diversion."

14 Do you see that?

15 A. Yes.

16 Q. Do you agree with that
17 statement?

18 A. Yes.

19 Q. Okay. So the -- the
20 direction -- the statement here is that
21 distributors need to take reasonable
22 steps, right?

23 A. Yes.

24 Q. The -- the letter does not

1 state that registrants need to take every
2 possible step, does it?

3 A. No. It says reasonable.

4 Q. Okay. Now, one key point of
5 the Controlled Substances Act is that DEA
6 wanted registrants to set up their supply
7 chain so they did not supply controlled
8 substances to customers who diverted
9 them, right?

10 A. Correct.

11 Q. Okay. Would DEA agree that
12 a distributor was acting reasonably if it
13 structured its business so that it only
14 distributed to retail chain pharmacies
15 who were among the 98 to 99.9 percent of
16 registrants who did not divert controlled
17 substances?

18 MR. FINKELSTEIN: Objection.
19 Incomplete hypothetical, and I
20 will instruct you not to answer to
21 the extent that that answer
22 requires information relating to
23 ongoing enforcement actions or
24 investigations.

1 Subject to that objection,
2 you can answer.

3 THE WITNESS: Could you
4 please repeat it?

5 BY MR. STEPHENS:

6 Q. Sure. DEA would agree that
7 a distributor was acting reasonably if it
8 structured its business so it only
9 distributed to retail chain pharmacies
10 who were among the 99 -- 98 to
11 99.9 percent of registrants who did not
12 divert controlled substances?

13 MR. FINKELSTEIN: Also
14 foundation.

15 You can answer.

16 MR. FARRELL: Excuse me. I
17 need -- I think I need to place an
18 objection on the record.

19 Objection. I think I need
20 to say something on the record.

21 Noting that you represent
22 Walmart, I just want to make sure
23 that we -- the questions that
24 you're asking are tailored in

1 terms of Walmart's capacity as a
2 distributor, instead of Walmart's
3 capacity as a dispenser, because
4 as you know, we've long had
5 litigation quarrels on whether or
6 not we can get into dispensing
7 practices.

8 So I just want to make sure
9 the record is clear that the
10 plaintiffs and the PEC are not
11 waiving their right to one day
12 open discussions on dispensing
13 practices.

14 MR. STEPHENS: Paul, if --
15 if you look at my question, my
16 question only talks about
17 distribution.

18 MR. FARRELL: Then you
19 talked about the 99 percent of
20 prescribers. So that's why I was
21 concerned whether or not --

22 MR. STEPHENS: It's -- it's
23 simply distribution. That's all
24 I'm asking. That's why the

1 question has got two references to
2 distribution, period.

3 MR. FARRELL: Okay. Very
4 good. Sorry.

5 MR. FINKELSTEIN: Do you
6 remember the question?

7 THE WITNESS: One more time
8 please.

9 BY MR. STEPHENS:

10 Q. DEA would agree that a
11 distributor was acting reasonably if it
12 structured its business so it only
13 distributed to retail chain pharmacies
14 who were among the 99.5 percent,
15 98 percent of registrants who did not
16 divert controlled substances?

17 MR. FINKELSTEIN: The
18 objections are foundation,
19 incomplete hypothetical, and don't
20 answer based on confidential law
21 enforcement information.

22 THE WITNESS: Okay. Again,
23 I think this goes back to, you can
24 have the best plans, but in terms

1 of execution and implementation of
2 that plan, that business plan
3 you're talking about, we did have
4 a chain that it was specifically
5 on their distribution center that
6 did not report suspicious orders
7 and that was part of a civil
8 settlement of \$80 million.

9 So that company thought they
10 had a business strategy in place
11 and they ended up with their
12 distribution center in Florida not
13 doing what they said they were
14 going to do.

15 BY MR. STEPHENS:

16 Q. Okay. Let me re-ask it from
17 a different angle.

18 A. Sure.

19 Q. Does DEA agree the
20 distributor is acting reasonably if it
21 structured its business model so it
22 distributes to customers who are not
23 among the 1 or 2 percent of people who
24 divert prescription opioids?

1 MR. FINKELSTEIN: Incomplete
2 hypothetical.

3 MR. FARRELL: Again, my
4 objection is you laid the
5 foundation that the 1 or 2 percent
6 included doctors trying to do the
7 right thing. So I just want to
8 make it clear that if we're
9 getting into dispensing claims,
10 that's a big issue for the
11 plaintiffs.

12 MR. STEPHENS: I'm not.

13 THE WITNESS: I would just
14 repeat that you can have the best
15 strategy planned, but are you
16 executing that plan.

17 BY MR. STEPHENS:

18 Q. Okay. All right. But if a
19 distributor, just generally, a
20 distributor -- if a distributor is not
21 distributing prescription opioids to
22 someone who is diverting them, is the
23 distributor acting reasonably in the eyes
24 of DEA?

1 MR. FINKELSTEIN: Incomplete
2 hypothetical. That was the third
3 time you asked.

4 You can answer a third time.

5 THE WITNESS: The --
6 their -- according to your --
7 my -- what I understand you're
8 asking is, it's a distributor, a
9 company distributor is sending to
10 their own pharmacies, correct?

11 BY MR. STEPHENS:

12 Q. No. I've changed that.

13 A. Okay.

14 Q. Okay. So my question is, if
15 a distributor is not distributing
16 prescription opioids to someone who is
17 diverting them, is the distributor acting
18 reasonably in the eyes of DEA?

19 MR. FINKELSTEIN: Incomplete
20 hypothetical. Asked and answered.

21 THE WITNESS: This -- this
22 isn't just, I mean, just opioids,
23 you have responsibility for all
24 controlled substances that are

1 distributed. It's not just
2 opioids. The responsibility is
3 all controlled substances.

4 BY MR. STEPHENS:

5 Q. Okay. So let me re-ask the
6 question. If a distributor is not
7 distributing controlled substances to
8 someone who is diverting them, is the
9 distributor acting reasonably in the eyes
10 of DEA?

11 MR. FINKELSTEIN: Incomplete
12 hypothetical. Asked and answered.

13 Go ahead and answer again.

14 THE WITNESS: So there's no
15 controlled substances being
16 distributed?

17 BY MR. STEPHENS:

18 Q. Let me re-ask the question.

19 A. Sure.

20 Q. If a distributor is not
21 distributing controlled substances to
22 someone who is diverting them, is the
23 distributor acting reasonably in the eyes
24 of DEA?

1 MR. FINKELSTEIN: Incomplete
2 hypothetical. Asked and answered.

3 THE WITNESS: To -- give me
4 the last part? Who is it going
5 to?

6 BY MR. STEPHENS:

7 Q. If a distributor is not
8 distributing controlled substances to
9 someone who is diverting them and
10 distributing to others, is the
11 distributor acting reasonably in the eyes
12 of DEA?

13 MR. FINKELSTEIN: Same
14 objections.

15 THE WITNESS: Yes.

16 BY MR. STEPHENS:

17 Q. Okay. The diversion control
18 group at DEA headquarters in Washington
19 DC understand that DEA field division
20 offices across the country will interest
21 act with registrants, true?

22 A. True.

23 Q. And DEA personnel from DEA
24 field offices will communicate with

1 registrants about a registrant's SOMs
2 system, true?

3 A. Yes. True.

4 Q. DEA headquarters expects a
5 registrant to listen to the information
6 it receives from DEA field office
7 personnel, true?

8 MR. FINKELSTEIN: Vague.

9 THE WITNESS: Yeah. It
10 depends what they are asking,
11 sure.

12 BY MR. STEPHENS:

13 Q. Okay. And the registrants
14 who are visited by DEA field office
15 personnel can rely on the information
16 that they receive from DEA field division
17 personnel regarding SOMs systems, true?

18 MR. FINKELSTEIN: Vague.
19 Incomplete hypothetical.

20 THE WITNESS: Yeah, they get
21 guidance.

22 BY MR. STEPHENS:

23 Q. Would you agree that it's
24 important for DEA's diversion control

1 leadership at DEA headquarters in
2 Washington DC to clearly communicate its
3 interpretation of the requirements of the
4 CSA and its regulations related to
5 suspicious order monitoring to DEA's
6 field offices?

7 MR. FINKELSTEIN: Asked and
8 answered. I'll note that every
9 set of attorneys has asked a
10 version of this question.

11 But you can answer again.

12 THE WITNESS: Yes.

13 BY MR. STEPHENS:

14 Q. Okay. You would agree that
15 providing clear direction to DEA's field
16 divisions one of the most important
17 functions of the diversion control group
18 leadership at headquarters?

19 A. Yes.

20 Q. If DEA headquarters does not
21 clearly communicate its interpretation of
22 the regulations and statutes related to
23 the suspicious order monitoring programs
24 to DEA's field offices, the field offices

1 may give inaccurate information to
2 registrants?

3 MR. FINKELSTEIN: Vague.

4 MS. SINGER: Objection.

5 Calls for speculation.

6 THE WITNESS: I don't -- I
7 don't know specifically what every
8 field office has provided that
9 guidance and oftentimes when there
10 is a question regarding that, we
11 will -- the field is instructed to
12 have the registrant reach out to
13 headquarters for an official
14 review.

15 BY MR. STEPHENS:

16 Q. Okay.

17 A. So the official review would
18 come from the headquarters side.

19 Q. Okay. My question is a
20 little bit -- I understand what you're
21 saying. My question is just a little bit
22 different.

23 My question is, if the field
24 office doesn't necessarily understand

1 headquarter's position on something
2 related to the statute and the
3 regulations, there's a risk that they
4 could provide inaccurate information to
5 registrants in the field?

6 MS. SINGER: Objection.

7 Calls for speculation.

8 MR. FINKELSTEIN: I'll join.

9 Add vague, incomplete
10 hypothetical.

11 THE WITNESS: I would -- if
12 they don't know, and don't ask,
13 then yes, hypothetically, yes.

14 BY MR. STEPHENS:

15 Q. All right. So let's now
16 talk about communications between DEA and
17 the registrants. All right?

18 A. Yes.

19 Q. Okay. Agree that at some
20 point after -- well, let me strike that
21 and start over.

22 Mr. Rannazzisi ran the
23 diversion control group from 2006 to
24 about 2015, right?

1 A. Yes. That sounds about
2 right.

3 Q. Okay. After Mr. Rannazzisi
4 left DEA in 2015, DEA's leadership
5 recognized that it needed to make some
6 important changes to improve how DEA
7 communicated with registrants, true?

8 MR. FINKELSTEIN: Objection.
9 Vague.

10 MS. SINGER: Lack of
11 foundation.

12 THE WITNESS: I mean, yeah,
13 yeah.

14 BY MR. STEPHENS:

15 Q. DEA's leadership after
16 Mr. Rannazzisi left DEA in 2015 wanted to
17 increase collaboration with registrants
18 to decrease diversion, correct?

19 A. Correct.

20 Q. DEA's current leadership has
21 acknowledged that it needs to do better
22 in its efforts to collaborate with
23 manufacturers, distributors, and retail
24 chain pharmacies, true?

1 A. I believe we all need to do
2 it.

3 Q. Okay.

4 A. Not just one. It's --
5 everybody has to be involved.

6 Q. My question is maybe a
7 little bit different than your answer.
8 So let me restate it.

9 A. Sure.

10 Q. DEA's current leadership has
11 acknowledged that it needs to do better
12 in its efforts to collaborate with
13 manufacturers, distributors and retail
14 chain pharmacies?

15 A. Correct.

16 MR. FINKELSTEIN: Just wait.

17 (Document marked for
18 identification as Exhibit
19 DEA-Prevoznik-17.)

20 BY MR. STEPHENS:

21 Q. Mr. Prevoznik, I'm showing
22 you what has been marked as Exhibit
23 Number 17. It is more summit -- or
24 congressional materials.

1 This one is dated March 20,
2 2018. It's a hearing in front of the
3 subcommittee of oversight and
4 investigations. The committee on energy
5 and commerce entitled, "The Drug
6 Enforcement Administration's Role in
7 Combatting the Opioid Epidemic."

8 Do you see that?

9 A. Yes.

10 Q. All right. I would direct
11 you to Page 21.

12 MR. FINKELSTEIN: Counsel,
13 whose highlighting is this?

14 MR. STEPHENS: We can get a
15 clean version at a break. That
16 highlighting would be -- it may be
17 mine.

18 MR. FINKELSTEIN: Okay.

19 BY MR. STEPHENS:

20 Q. On Page 21 do you see in
21 bold in the middle of the page it talks
22 about DEA's lessons learned and the
23 response of the proliferation of CPDs?

24 A. Yes.

1 Q. Okay. And if you look at
2 the -- the first sentence there, it
3 reads, "Due to the complexity of DEA's
4 regulatory program, the diversion control
5 division has worked aggressively to
6 improve its communication and cooperation
7 with its more than 1.7 million
8 registrants who represent medical
9 professionals, pharmaceutical drug
10 manufacturers, and those in the drug
11 chain" -- "drug supply chain."

12 Do you see that?

13 A. Yes.

14 Q. Have I read that accurately?

15 A. Yes.

16 Q. Okay. And -- and this is a
17 statement indicating that DEA's
18 leadership in March 20th of 2018 was
19 working aggressively to improve its
20 communication and cooperation with
21 registrants, right?

22 A. Right.

23 Q. Okay. DEA also recognizes
24 that if it improves on its communication

1 responsibilities with its registrants, it
2 would help in the effort to reduce
3 prescription drug abuse?

4 MR. FINKELSTEIN: Vague.
5 Incomplete hypothetical.

6 THE WITNESS: That's the
7 goal.

8 BY MR. STEPHENS:

9 Q. Okay. And would you agree
10 that current leadership at DEA is now
11 willing to collaborate with registrants
12 who can help DEA reduce diversion?

13 A. Yes.

14 Q. Fair to say that DEA's
15 current leadership understands that
16 treating potential good faith
17 collaborators as adversaries is not an
18 effective way to reduce diversion?

19 MR. FINKELSTEIN: Incomplete
20 hypothetical.

21 THE WITNESS: Correct.

22 BY MR. STEPHENS:

23 Q. All right. Mr. Prevoznik,
24 I'd like to transition a little bit here

1 and ask you some questions about the
2 internet distributor initiative,
3 including why DEA gave those internet
4 distributor initiative briefings, when
5 the briefings occurred and who generally
6 received them. Okay?

7 A. Sure.

8 Q. This is 30(b)(6) Topic 3.
9 Okay?

10 A. Yes.

11 Q. All right. And -- and you
12 testified about some of this yesterday.
13 I'll try and go quickly through that.
14 All right?

15 A. Yes.

16 Q. In 2006, DEA implemented the
17 internet distributor initiative, right?

18 MR. FINKELSTEIN: Asked and
19 answered.

20 THE WITNESS: 2005.

21 BY MR. STEPHENS:

22 Q. Okay. 2005, right. So DEA
23 implements it in 2005, right?

24 A. Correct.

1 Q. Okay. And the -- the
2 program is initially designed to educate
3 wholesale distributors related to rogue
4 internet pharmacies, and then downstream,
5 a little bit later, it was to diverting
6 rogue pain clinics, right?

7 MR. FINKELSTEIN: Asked and
8 answered.

9 THE WITNESS: Correct.

10 BY MR. STEPHENS:

11 Q. Okay. All right. I was
12 just trying to remind you from where we
13 were yesterday.

14 All right. My question is,
15 did DEA ever have a retail chain pharmacy
16 initiative?

17 A. No.

18 Q. Did DEA ever meet with CVS,
19 Rite Aid, Walmart or Walgreens, HBC Giant
20 Eagle, as part of DEA's internet
21 distributor initiative?

22 A. Not to my knowledge.

23 Q. Okay. Now at the time, you
24 know, taking you back to 2005, 2006, DEA

1 believed that some of these internet
2 pharmacies were rogue pharmacies, meaning
3 that those pharmacies were diverting
4 opioids?

5 MR. FINKELSTEIN: Asked and
6 answered.

7 THE WITNESS: Correct.

8 BY MR. STEPHENS:

9 Q. Okay. The DEA also
10 understood that not all pharmacies
11 operating on the internet diverted
12 controlled substances, true?

13 A. Correct.

14 Q. So some internet pharmacies
15 were rogue and diverted opioids, and
16 other internet pharmacies were not rogue
17 and did not divert opioids, true?

18 MS. SINGER: Objection.
19 Scope.

20 THE WITNESS: Could you
21 repeat that?

22 BY MR. STEPHENS:

23 Q. Sure. Some internet
24 pharmacies were rogue and diverted

1 opioids in the eyes of DEA. And others
2 were not rogue and did not divert
3 opioids, correct?

4 MR. FINKELSTEIN: Calls for
5 speculation.

6 THE WITNESS: I am not aware
7 of any pharmacies not on the --
8 the latter part of your question.

9 Because not all -- not all
10 internet pharmacies were
11 dispensing opioids, but they could
12 be dispensing other controlled
13 substances, and that would be
14 diversion of those controlled
15 substances.

16 (Document marked for
17 identification as Exhibit
18 DEA-Prevoznik-18.)

19 BY MR. STEPHENS:

20 Q. Mr. Prevoznik, I've placed
21 in front of you a transcript from the --
22 a hearing before Congress dated May 16,
23 2007. It's a hearing before the
24 committee on the judiciary of the United

1 States Senate entitled, "Rogue Online
2 Pharmacies: The Growing Problem of
3 Internet Drug Trafficking."

4 Do you see that?

5 A. Yes.

6 Q. Okay. If I could direct you
7 to Page 52.

8 If you look at the top of
9 Page 52, Mr. Prevoznik, it's entitled,
10 "Rogue Online Pharmacies: The Growing
11 Problem of Internet Drug Trafficking,"
12 dated May 16, 2007. Questions for the
13 hearing record for Joseph Rannazzisi,
14 deputy assistant administrator, office of
15 diversion control, Drug Enforcement
16 Administration, United States Department
17 of Justice.

18 Do you see that?

19 A. Yes.

20 Q. Okay. The very first
21 question is from Chairman Leahy, do you
22 see that?

23 A. Yes.

24 Q. And 1.a. asks:

1 "Approximately how many websites
2 currently offer to sell controlled
3 substances illegally over the internet?"

4 Do you see that?

5 A. Yes.

6 Q. Okay. Now, if you look down
7 towards the -- the middle of the
8 response, there's a state -- there's a
9 sentence that starts it should be noted.
10 Do you see that?

11 A. Yes.

12 Q. The statement reads: "It
13 should be noted that there are legitimate
14 pharmacies that provide controlled
15 substances via the internet and operate
16 daily within the boundaries of the law."

17 Do you see that?

18 A. Yes.

19 Q. Do you agree with that?

20 MR. FINKELSTEIN: Scope.

21 Calls for speculation.

22 THE WITNESS: Yeah, this is
23 before the Ryan-Haight Act. So,
24 yes.

1 BY MR. STEPHENS:

2 Q. Okay. So my -- my point
3 was, some internet pharmacies in the eyes
4 of DEA were rogue and diverted opioids --
5 or diverted controlled substances, fair?

6 A. Fair.

7 Q. All right. Other online
8 internet pharmacies were not rogue
9 pharmacies and operated within the
10 boundaries of the law in the eyes of DEA
11 as of May 16, 2007, based on what DEA
12 told the Senate, right?

13 A. Correct.

14 Q. Okay. Now, did DEA blame
15 the internet pharmacies who were acting
16 within the boundaries of the law for the
17 actions of the rogue internet pharmacies
18 who DEA thought were diverting
19 prescription opioids?

20 MS. SINGER: Objection.
21 Scope.

22 MR. FINKELSTEIN: Vague.
23 Incomplete hypothetical.

24 THE WITNESS: Not really

1 sure what you mean by the use of
2 the word "blame."

3 BY MR. STEPHENS:

4 Q. Did DEA take any action,
5 civil, regulatory, administrative,
6 against legitimate internet pharmacies
7 who DEA thought was acting within the
8 boundaries of the law for the actions of
9 the other internet pharmacies who DEA
10 thought were rogue and were diverting
11 controlled substances?

12 MR. FINKELSTEIN: Vague.
13 Incomplete hypothetical.

14 THE WITNESS: I'm not aware
15 of it.

16 BY MR. STEPHENS:

17 Q. Okay. So one aspect that
18 DEA included in its internet distributor
19 briefing related to the percentage of
20 controlled versus noncontrolled
21 substances that a particular pharmacy
22 ordered, right?

23 MR. FINKELSTEIN: Vague.

24 THE WITNESS: Correct.

1 BY MR. STEPHENS:

2 Q. Okay. And you testified
3 about this a little bit yesterday, right?

4 A. Yes.

5 Q. Okay. All right. So I've
6 got a few more questions related to that.
7 I will try not to repeat the exact
8 question.

9 And one characteristic the
10 DEA noticed about rogue internet
11 pharmacies that were diverting controlled
12 substances was an imbalance that they had
13 between the ratio of controlled
14 substances compared to non-controlled
15 substances that they distributed, right?

16 A. That would be one criteria.
17 Yes.

18 Q. And some of the rogue
19 internet pharmacies that were diverting
20 controlled substances had a ratio where
21 they distributed 95 percent controlled
22 substances against 5 percent
23 non-controlled substances, right?

24 A. Yes.

1 Q. And DEA viewed a ratio of
2 95 percent controlled substances versus 5
3 percent non-controlled substances as a
4 possible indication that the internet
5 pharmacy was diverting the controlled
6 substances true?

7 A. I don't -- I don't think we
8 locked in on those specific numbers. I
9 mean, that was an example he gave of 95
10 and five. But we were -- we were
11 comparing against a brick-and-mortar
12 store of what typically happens there.

13 Q. Yeah. Okay. So -- and a
14 brick-and-mortar store would be like a
15 Walmart or CVS, a Rite Aid, HBC Giant
16 Eagle, CVS, right?

17 A. As well as independent
18 pharmacies as well, yes.

19 Q. Okay. And Walmart
20 pharmacies never had a ratio of
21 controlled to noncontrolled substances
22 that approached anything like the 95
23 percent to 5 percent ratio that the DEA
24 saw at some rogue internet pharmacies,

1 right?

2 MR. FINKELSTEIN: Wait.

3 Scope, calls for speculation.

4 THE WITNESS: Not to my
5 knowledge.

6 BY MR. STEPHENS:

7 Q. Okay. CVS, Walgreens, Rite
8 Aid, HBC Giant Eagle, they never had a
9 ratio of controlled to noncontrolled
10 substances that was 95 percent controlled
11 to 5 percent non-controlled, right?

12 MR. FINKELSTEIN: Scope.
13 Calls for speculation.

14 THE WITNESS: Not to my
15 knowledge.

16 MR. FINKELSTEIN:
17 Mr. Videographer, what's our
18 on-the-record time?

19 THE VIDEOGRAPHER:
20 42 minutes.

21 MR. FINKELSTEIN: We're past
22 seven hours. So everybody knows.

23 BY MR. STEPHENS:

24 Q. DEA has acknowledged and has

1 acknowledged in presentations that it
2 gave that no chain pharmacies were rogue
3 pharmacies, right?

4 A. Correct.

5 MR. FINKELSTEIN: Hang on
6 one second. I am just reading the
7 question.

8 Okay.

9 BY MR. STEPHENS:

10 Q. Your answer was "correct,"
11 right?

12 A. Yes.

13 Q. Walmart, CVS, Rite Aid,
14 Walgreens, HBC Giant Eagle are all chain
15 pharmacies, true?

16 A. True.

17 Q. DEA is generally aware that
18 Walmart only distributes controlled
19 substances to its own Walmart store
20 pharmacies, right?

21 MR. FINKELSTEIN: Objection.
22 Scope. Calls for speculation.

23 THE WITNESS: Well, that
24 just changed. But prior to the

1 change, yes.

2 BY MR. STEPHENS:

3 Q. Okay. And the change now is
4 that they don't distribute at all, right?

5 A. Correct.

6 Q. Okay. Walmart did not
7 distribute controlled substances to
8 internet pharmacies, right?

9 MR. FINKELSTEIN: Scope.
10 Calls for speculation.

11 THE WITNESS: I don't know.
12 I can't answer that, because I
13 don't know if there were any sales
14 store -- from the store to one of
15 those -- one of those potentially
16 rogue pharmacies.

17 BY MR. STEPHENS:

18 Q. I'm only talking about --

19 MR. FINKELSTEIN: Let him
20 finish his answer.

21 MR. STEPHENS: I've let him
22 finish his answer.

23 MR. FINKELSTEIN: No, you
24 haven't let him finish his answer.

1 MR. STEPHENS: All morning
2 long.

3 BY MR. STEPHENS:

4 Q. Mr. Prevoznik, have I been
5 interrupting you this morning?

6 A. I'm fine.

7 Q. Okay. Thank you.

8 CVS did not distribute
9 controlled substances to rogue internet
10 pharmacies, correct?

11 MR. FINKELSTEIN: Vague.

12 THE WITNESS: Again, I don't
13 know if there were transactions
14 between the -- a pharmacy to
15 pharmacy.

16 BY MR. STEPHENS:

17 Q. I'm talking about
18 distribution.

19 MR. FINKELSTEIN: Scope.

20 Incomplete hypothetical. Vague.

21 THE WITNESS: Well, now that
22 you've added distribution in that,
23 then no, not to my knowledge.

24 BY MR. STEPHENS:

1 Q. My question, Mr. Prevoznik,
2 just to reconfirm, all deal with
3 distribution here.

4 A. Okay.

5 Q. Okay. So I'll re-ask it. I
6 think we got an answer. But let me
7 re-ask it so the record is clear.

8 CVS did not distribute
9 controlled substances to rogue internet
10 pharmacies right?

11 A. Not --

12 MS. SINGER: Objection
13 scope.

14 MR. FINKELSTEIN: Wait, Tom.
15 Scope. Incomplete
16 hypothetical. Vague. We're past
17 seven hours, and you're still
18 outside the scope. I'm going to
19 start instructing him not to
20 answer.

21 You can answer this time.

22 THE WITNESS: Not to my
23 knowledge.

24 BY MR. STEPHENS:

1 Q. And Rite Aid didn't
2 distribute controlled substances to
3 internet pharmacies, right?

4 MR. FINKELSTEIN: Scope.
5 I instruct you not to
6 answer.

7 MR. STEPHENS: What's the
8 basis for that?

9 MR. FINKELSTEIN: It's
10 outside the scope. You've spent
11 more than seven hours with this
12 witness. Ask questions within the
13 scope of the deposition that is.

14 MS. MAINIGI:
15 Mr. Finkelstein, if I may just
16 note on the record. I don't know
17 what relevance seven hours has and
18 why you continue to reference
19 seven hours to this particular
20 deposition. The manner in which
21 the time is calculated, as you
22 know, was per Judge Cohen --
23 Special Master Cohen's order.

24 The seven hours is

1 irrelevant. I think it would
2 certainly be relevant in that we
3 wouldn't want to burden the
4 witness by going longer than seven
5 hours, perhaps, in the course of
6 one particular day. But I don't
7 think there's any need, the
8 morning of the deposition, to keep
9 referencing seven hours.

10 MR. FINKELSTEIN: You've
11 noted your position that the seven
12 hours is irrelevant. My
13 instruction stands. And we can
14 revisit this with the special
15 master.

16 MS. MAINIGI: If there's
17 something to revisit, we're happy
18 to do that. I don't see anything
19 to revisit.

20 MR. FINKELSTEIN: Good. I
21 agree.

22 THE REPORTER: You have to
23 speak up. There's no mic.

24 MR. KOBRIN: Sorry. I'm

1 Josh Kobrin for HBC. Mr. Stephens
2 is representing all of the chain
3 pharmacies. And to cut him off
4 when he's trying to ask questions
5 on behalf of all those chain
6 pharmacies when he's in the middle
7 of a question that is clearly not
8 a hypothetical. On the basis that
9 it's a hypothetical, is totally
10 improper.

11 MR. FINKELSTEIN: Your
12 objection is noted.

13 MR. STEPHENS: I would also
14 note that the answers that the
15 witness started with this morning
16 about diversion, where to -- who
17 diverts is relevant to the
18 adequacy of a SOMs program, and
19 where diversion occurs being
20 relevant to the adequacy of a SOMs
21 program, and to -- to assess a
22 suspicious order, where the
23 shipment goes and it's distributed
24 to is relevant, puts me well

1 within Topic Number 2 and Topic
2 Number 3, that deal with DEA's
3 interpretation and enforcement of
4 the Controlled Substances Act, its
5 regulations, what is suspicious,
6 know your customer, and DEA's
7 guidance on the adequacy of a SOMs
8 program.

9 MR. FINKELSTEIN: Let -- let
10 me answer. You are asking him
11 what a specific retail chain
12 pharmacy actually does in
13 operation. That's outside the
14 scope, and I've instructed him not
15 to answer that question.

16 You can ask your next
17 question.

18 MR. STEPHENS: Who they
19 distribute to.

20 BY MR. STEPHENS:

21 Q. Rite Aid did not distribute
22 controlled substances to internet
23 pharmacies, correct?

24 MR. FINKELSTEIN: Instruct

1 you not to answer.

2 THE WITNESS: Correct.

3 MR. FINKELSTEIN: Tom. Tom.

4 BY MR. STEPHENS:

5 Q. Walmart -- Walgreens did not
6 distribute controlled substances to
7 internet pharmacies, correct?

8 MR. FINKELSTEIN: Instruct
9 you not to answer.

10 THE WITNESS: Taking the
11 advice of my attorney.

12 BY MR. STEPHENS:

13 Q. HBC Giant Eagle did not
14 distribute controlled substances to
15 internet pharmacies, correct?

16 MR. FINKELSTEIN: Instruct
17 you not to answer.

18 THE WITNESS: Following my
19 attorney's instructions.

20 BY MR. STEPHENS:

21 Q. Okay. Mr. Prevoznik,
22 after -- you mentioned the Ryan-Haight
23 Act in 2008, right?

24 A. Correct.

1 Q. Okay. The Ryan-Haight Act
2 in 2008 dealt with a legislative attempt
3 to try and deal with the problem that DEA
4 was seeing with rogue internet
5 pharmacies, fair?

6 MS. SINGER: Objection.
7 Scope.

8 THE WITNESS: Correct.
9 BY MR. STEPHENS:

10 Q. Okay. So I'm again going to
11 ask you some questions about where DEA
12 saw diversion occurring, okay?

13 A. Yes.

14 Q. Okay. Now, the -- after the
15 Ryan-Haight Act, DEA took some
16 enforcement actions against rogue
17 internet pharmacies, right?

18 A. Yes. As -- as well as some
19 distributors.

20 Q. Okay. And -- and after
21 that, in the 2008-2009 time period, DEA
22 began to see issues with rogue pain
23 clinics, right?

24 MR. FINKELSTEIN: Asked and

1 answered.

2 THE WITNESS: Correct.

3 MR. STEPHENS: I'm just
4 trying to set the time frame for
5 the witness.

6 BY MR. STEPHENS:

7 Q. Do you understand what I'm
8 saying, Mr. Prevoznik?

9 A. Yes.

10 Q. Okay. All right. So it was
11 in the -- in -- approximate time frames
12 here, and clarify to whatever degree you
13 feel you need to, Mr. Prevoznik. But
14 roughly in 2009, 2010, and shortly after
15 that, the DEA started to have more issues
16 with rogue pain clinics, right?

17 A. Correct.

18 Q. Okay. Did DEA ever conduct
19 a distributor briefing with retail chain
20 pharmacies related to rogue pain clinics?

21 MR. FINKELSTEIN: Asked and
22 answered.

23 THE WITNESS: Correct.

24 BY MR. STEPHENS:

1 Q. Okay. So now like rogue --
2 or I'm sorry, strike that. Let me re-ask
3 the question.

4 Like internet pharmacies,
5 DEA -- DEA would agree that not all pain
6 clinics diverted controlled substances?

7 MR. FINKELSTEIN: Calls for
8 speculation. Asked and answered.

9 THE WITNESS: Correct.

10 BY MR. STEPHENS:

11 Q. Okay. There was some good
12 pain clinics who operated within the
13 boundaries of the law and there were some
14 rogue pain clinics that operated outside
15 the boundaries of the law.

16 Is that fair?

17 MS. SINGER: Same objections
18 as to scope of the questioning
19 here.

20 THE WITNESS: Yes.

21 BY MR. STEPHENS:

22 Q. Okay. Did DEA file any
23 lawsuits against the good pain clinics to
24 try and make them pay for the harm caused

1 by the rogue pain clinics?

2 MR. FINKELSTEIN: Objection.

3 Vague.

4 THE WITNESS: Not that I'm

5 aware of.

6 BY MR. STEPHENS:

7 Q. Okay. And like the rogue
8 internet pharmacies that preceded them,
9 these rogue pain clinics that were
10 diverting controlled substances typically
11 distributed a lopsided ratio of
12 controlled substances to noncontrolled
13 substances?

14 MS. SINGER: Objection.

15 Scope.

16 THE WITNESS: To my -- yes.

17 BY MR. STEPHENS:

18 Q. Okay. The -- rogue pain
19 clinics were not full service pharmacies
20 like a retail chain pharmacy like Walmart
21 or CVS, Rite Aid or Walgreens, right?

22 MR. FINKELSTEIN: Calls for
23 speculation. Foundation.

24 THE WITNESS: I'm not sure

1 what you mean by --

2 MS. SINGER: Objection as to
3 scope.

4 BY MR. STEPHENS:

5 Q. All right. So rogue pain
6 clinics didn't sell cornflakes, greeting
7 cards, Oreo cookies, that type thing,
8 right?

9 MR. FINKELSTEIN: Calls for
10 speculation.

11 MS. SINGER: Objection.
12 Scope.

13 THE WITNESS: Correct.

14 BY MR. STEPHENS:

15 Q. Okay. But retail chain
16 pharmacies do sell a full service of
17 other things to their customers, right?

18 MR. FINKELSTEIN: Calls for
19 speculation.

20 THE WITNESS: Yes.

21 BY MR. STEPHENS:

22 Q. Mr. Prevoznik, if I could
23 I'd like to transition to Topic Number 9
24 which -- of your 30(b)(6), which relates

1 to ARCOS. Okay?

2 A. Yes.

3 Q. And I'd like to ask you a
4 few questions about why DEA processes and
5 analyzes ARCOS data to identify and stop
6 sources of diversion.

7 Okay?

8 A. Yes.

9 Q. Okay. So -- and you've
10 answered some questions about ARCOS
11 yesterday, right?

12 A. Yes.

13 Q. Okay. So I'll try not to
14 re-ask those. I'll do the best I can.
15 I'll -- I may have to touch on some of
16 them just to set where I'm going with the
17 other questions that I want to ask.

18 All right?

19 A. Yes.

20 Q. Okay. So yesterday you
21 mentioned that the ARCOS database has the
22 ability to generate investigative leads
23 that DEA could pursue proactively to
24 discover the identity of individuals

1 responsible for diverting opioids, true?

2 MR. FINKELSTEIN: Letting
3 this go for now. You can answer.

4 THE WITNESS: Yes.

5 BY MR. STEPHENS:

6 Q. And those ARCOS leads could
7 be helpful to DEA's efforts in the field,
8 right?

9 A. Yes.

10 Q. And that would support DEA's
11 mission to prevent diversion where it's
12 occurring, right?

13 A. It points to it. It might
14 not just be that source. There's going
15 to be other issues as well, so...

16 Q. Would you agree with a
17 general principle that more investigative
18 leads generated by ARCOS would equate to
19 more proactive investigations of
20 potential diverters?

21 MR. FINKELSTEIN: Incomplete
22 hypothetical.

23 THE WITNESS: Yeah. It's a
24 point.

1 BY MR. STEPHENS:

2 Q. And more proactive
3 investigations of potential diverters
4 should result in more actions filed
5 against suspected diverters?

6 MR. FINKELSTEIN: Incomplete
7 hypothetical.

8 THE WITNESS: What kind of
9 actions?

10 BY MR. STEPHENS:

11 Q. Any. Admin, civil,
12 criminal.

13 MR. FINKELSTEIN: Same --

14 BY MR. STEPHENS:

15 Q. Basically, the more leads
16 you have, the more cases you can make,
17 right?

18 MR. FINKELSTEIN: Same
19 objection.

20 THE WITNESS: Yes.

21 BY MR. STEPHENS:

22 Q. More leads is a good thing
23 for an investigator, right?

24 MR. FINKELSTEIN: Same

1 objection.

2 THE WITNESS: Yes.

3 BY MR. STEPHENS:

4 Q. All right. So let me ask
5 you a few questions about DEA's procedure
6 regarding who at DEA processes the ARCOS
7 data to generate the leads to identify
8 and stop diversion, okay?

9 A. Yes.

10 Q. Topic 9 in your 30(b)(6)
11 designation.

12 Yesterday you testified
13 that, as I understand it, there are
14 currently ten employees who work on the
15 ARCOS unit that analyzes the data; is
16 that right?

17 A. Yeah. Yes, they analyze the
18 data.

19 Q. Four input, and six output,
20 right?

21 A. Yes.

22 Q. Okay. The six output, would
23 those be the DEA employees who analyze
24 the data to put out to the field

1 proactive investigative leads that the
2 field can use? Am I understanding that?

3 A. Actually, the field has
4 access to it as well. So the field can
5 generate their own leads off it. So
6 our -- the group at headquarters assists
7 with -- assists -- often assists with
8 case investigations as well. So the
9 leads could come from either the field
10 themselves, the field investigators
11 themselves, or they may come from our
12 group at headquarters.

13 So it's a combination of
14 either source that would -- that could
15 potentiate those leads. So I know it's
16 not one particular group that does it.
17 There's various people doing it all
18 across the field.

19 Q. All right. Are you done?

20 A. Mm-hmm.

21 Q. Okay. I just wanted to make
22 sure I didn't interrupt you.

23 And my question may be more
24 artfully framed. Can you describe for me

1 the difference between the duties that
2 the four input analysts have at DEA
3 headquarters and compare that against the
4 duties that the six output employees have
5 at headquarters?

6 A. Sure. So the input duties
7 are -- that's the uploaded, as the
8 registrants upload their data. They --
9 that's what the input side does. They
10 deal with the -- to ensure that the data
11 is going in correctly, that errors are
12 being fixed. There's constant
13 communication with the registrants on,
14 you know, you have to fix these errors.
15 Is this what you meant? If they see
16 anomalies, they will call the registrant,
17 say, you know, your decimal point looks
18 like it may be off. Could you look at
19 your data?

20 And so there's that constant
21 communication to try to verify that what
22 they're reporting is true and accurate.
23 So that's the input side.

24 The output side takes that

1 data that comes from the registrants, and
2 then it -- through case support with the
3 field and with investigations, they do
4 the online statistical reports that we
5 upload. They respond to FOIAs. They
6 respond to doing -- for presentations.

7 They also do assessments,
8 trends assessments. They also do threat
9 assessments for the field. So that's
10 part of our -- building our scheduled
11 work plan. So it's a variety of
12 different things that that group does.

13 Q. Okay. That's helpful.
14 Thank you.

15 So there are ten people
16 there currently, right?

17 MR. FINKELSTEIN: Asked and
18 answered.

19 THE WITNESS: Yes.

20 BY MR. STEPHENS:

21 Q. Okay. And you supervised
22 this group for a while? Did you
23 supervise these ten employees for a
24 while?

1 A. I was never their direct
2 supervisor. I'm a step higher.

3 Q. Okay. No, I understand that
4 you're senior in the org chart. I'm just
5 trying to make sure that I understand at
6 some point these ten people were in your
7 reporting chain of command.

8 A. Yes, that's correct.

9 Q. Okay. They are not
10 currently?

11 A. Correct.

12 Q. Okay. All right. Has the
13 number -- and what's this -- what's this
14 unit called, this ARCOS unit, what does
15 DEA call it?

16 A. ARCOS unit or targeting and
17 analysis.

18 Q. Okay. So if I call it the
19 ARCOS unit you understand what I'm
20 talking about?

21 A. Correct.

22 Q. Okay. All right. It
23 currently has ten employees. How many
24 employees did the -- this ARCOS unit have

1 in, say, 2015?

2 A. I'd speculate, because I
3 wasn't up there at that point. But
4 probably about ten.

5 Q. Okay. Can you identify any
6 period during your time at DEA where it
7 had more -- that the ARCOS unit had more
8 than ten employees on it?

9 A. Oh, I'm sorry. What I meant
10 by ten, you had ten in the output side
11 and you had about three on the input
12 side. So it was a slight increase. I
13 know -- I believe we're three under right
14 now on our organizational chart.

15 Q. So -- and you've been in DEA
16 for -- since '91?

17 A. Yeah.

18 Q. Okay. And just -- can you
19 identify any period of time between 2006
20 and 2015 where this ARCOS unit had more
21 than ten people working on it?

22 MR. FINKELSTEIN: Asked and
23 answered.

24 THE WITNESS: I don't know.

1 I don't know.

2 BY MR. STEPHENS:

3 Q. Okay. So DEA currently uses
4 ARCOS data in a proactive way to identify
5 targets to investigate for diverting
6 prescription opioids, right?

7 A. Correct.

8 Q. And in DEA terms, a
9 proactive investigation is where DEA
10 would identify a target and build a
11 forward-looking case using investigative
12 tools at DEA's disposal, right?

13 MR. FINKELSTEIN: Vague.

14 THE WITNESS: Yes.

15 BY MR. STEPHENS:

16 Q. Okay. And in contrast, a
17 reactive case is a situation where a
18 diversion investigator may have already
19 built a case and then, you know looks to
20 ARCOS for some information to confirm its
21 case against someone that's already been
22 built out, right?

23 A. I wouldn't say that it's all
24 the way to, like, the conclusion where we

1 come in. It's usually we are working
2 together through it --

3 Q. Okay.

4 A. -- as --

5 Q. Describe for me the
6 difference --

7 MR. FINKELSTEIN: Wait. Let
8 him finish his answer.

9 BY MR. STEPHENS:

10 Q. Mr. Prevoznik, was I
11 interrupting you?

12 MR. FINKELSTEIN: You just
13 did interrupt him.

14 BY MR. STEPHENS:

15 Q. I'm sorry. Did you feel
16 that I was interrupting you?

17 A. I'm fine.

18 Q. Okay. Thank you.

19 MR. FINKELSTEIN: The record
20 is going to reflect that he didn't
21 finish his answer. And I'm asking
22 counsel please let him finish his
23 answer.

24 BY MR. STEPHENS:

1 Q. Mr. Prevoznik, I'll work
2 with you all day long to let you finish
3 your answers. If you don't think I am, I
4 apologize. All right?

5 A. I'm good.

6 Q. Okay. Thank you. All
7 right. I'm just trying to understand in
8 DEA land what the difference is between
9 proactive and reactive, right.

10 So how would you describe
11 and define what reactive means?

12 A. Well, to me reactive would
13 be the field generated. So they are
14 turning to the ARCOS unit to say hey, I'm
15 either at the beginning part, middle
16 part, or I need charts. The U.S.
17 attorneys asked me to get charts on this.
18 So that would be reactive.

19 Proactive would be something
20 that that group puts out.

21 Q. Right. I got it.

22 One is an existing
23 investigation. They are just trying to
24 confirm something through the use of

1 ARCOS. And another one would be a
2 proactive lead generated from
3 headquarters to try and build a case,
4 right? Like a threat assessment.

5 A. Correct.

6 Q. A threat assessment would be
7 a proactive use of ARCOS, right?

8 MR. FINKELSTEIN: Objection.
9 Vague.

10 THE WITNESS: Yes.

11 BY MR. STEPHENS:

12 Q. And in your view, producing
13 threat assessments to the field is a good
14 thing?

15 MR. FINKELSTEIN: Objection.
16 Vague.

17 THE WITNESS: Yes.

18 BY MR. STEPHENS:

19 Q. Between 2006 and 2015, under
20 the leadership of Joe Rannazzisi, ARCOS
21 analysts did not provide quarterly threat
22 assessments to the 22 field divisions at
23 DEA, right?

24 MR. FINKELSTEIN: Vague.

1 You can answer.

2 THE WITNESS: Well, again,
3 we -- in 2010 when we all went off
4 the mainframe, the field had -- I
5 mean, we always had access to
6 ARCOS, so you did have the field
7 generating their own leads. So
8 they -- that -- that's what they
9 would do. They would use that
10 data for that.

11 BY MR. STEPHENS:

12 Q. Okay. All right. My
13 question is a little bit different. I
14 understand your response. My question is
15 a little bit different.

16 Between 2006 and 2015 under
17 the leadership of Joe Rannazzisi, the
18 ARCOS group at DEA headquarters did not
19 provide quarterly threat assessments to
20 the field divisions at DEA, true?

21 MR. FINKELSTEIN: Vague.

22 THE WITNESS: To my
23 knowledge, you're right.

24 MS. SINGER: Is this a good

1 time to take a break, or soon?

2 BY MR. STEPHENS:

3 Q. You okay? I've got -- I've
4 got a little bit more on these topics.

5 A. About five minutes?

6 About five minutes?

7 Q. Okay. Yeah, just let me
8 know.

9 A. I just need a break.

10 Q. Okay.

11 All right. So I've got some
12 additional questions that will focus on
13 the 2006 to 2015 time period. Okay? As
14 it relates to ARCOS.

15 A. Yes.

16 Q. Fair to say that DEA's
17 current leadership has improved how DEA
18 uses ARCOS data in its diversion
19 investigations after Mr. Rannazzisi
20 retired in 2015?

21 MR. FINKELSTEIN: Vague.

22 THE WITNESS: I'm not sure
23 what you mean by improvements.

24 BY MR. STEPHENS:

1 Q. Well, like using threat
2 assessments and sending those to the
3 field. You view those as a good thing,
4 right?

5 THE WITNESS: Yes.

6 MR. FINKELSTEIN: Objection.

7 Vague.

8 BY MR. STEPHENS:

9 Q. And that happened after
10 Mr. Rannazzisi left in 2015, right?

11 A. Yes.

12 Q. And the purpose of putting
13 those threat assessments out to the field
14 division is the hope that they will
15 reduce diversion, right?

16 MR. FINKELSTEIN: Vague.

17 THE WITNESS: Yes. But I do
18 want to emphasize that ARCOS is
19 not the only system that we use to
20 send -- that's analyzed to send
21 field -- leads out to the field.
22 I mean there's other databases
23 that we use and we work with other
24 federal agencies and share data.

1 So ARCOS is just a -- one part of
2 a vast array of analysis that's
3 used.

4 BY MR. STEPHENS:

5 Q. Okay. Between 2006 and 2015
6 under Mr. Rannazzisi's leadership, did
7 DEA have any published policy about what
8 happens after an ARCOS lead is generated?

9 A. Not to my knowledge.

10 Q. Between 2006 and 2015, under
11 Mr. Rannazzisi's leadership, did DEA have
12 any process where it maintained any
13 report indicating how many ARCOS leads
14 were sent to DEA field investigations for
15 investigation?

16 MR. FINKELSTEIN: Vague.

17 THE WITNESS: Not to my
18 knowledge.

19 BY MR. STEPHENS:

20 Q. Between 2006 and 2015, under
21 Mr. Rannazzisi's leadership, did DEA have
22 any process where it maintained any
23 report indicating how many ARCOS leads
24 were actually investigated at the field

1 division level?

2 A. Not to my knowledge.

3 Q. Between 2006 and 2015 under
4 Mr. Rannazzisi's leadership, did DEA have
5 any process where it maintained any
6 report indicating how many ARCOS leads
7 were referred out but not by DEA
8 headquarters, but not investigated at the
9 field division level?

10 A. Not to my knowledge.

11 Q. Between 2006 and 2015 under
12 Mr. Rannazzisi's leadership, did DEA have
13 any process where it maintained any
14 report indicating how many ARCOS leads
15 resulted in formal actions by DEA against
16 suspected diverters?

17 MR. FINKELSTEIN: Vague.

18 THE WITNESS: Not to my
19 knowledge.

20 BY MR. STEPHENS:

21 Q. Between 2006 and 2015 under
22 Mr. Rannazzisi's leadership, did DEA have
23 any process where it maintained any
24 report indicating how many immediate

1 suspension orders DEA obtained based on
2 ARCOS leads?

3 A. Not to my knowledge.

4 Q. Between 2006 and 2015 under
5 Mr. Rannazzisi's leadership, did DEA have
6 any process where it maintained any
7 report indicating how many orders to show
8 cause DEA generated based on ARCOS leads?

9 A. Not to my knowledge.

10 Q. Between 2006 and 2015 under
11 Mr. Rannazzisi's leadership, did DEA have
12 any process where it maintained any
13 report indicating how many convictions
14 DEA obtained of diverters based on ARCOS
15 leads?

16 MR. FINKELSTEIN: Vague.

17 THE WITNESS: Not to my
18 knowledge.

19 BY MR. STEPHENS:

20 Q. Between 2006 and 2015 under
21 Mr. Rannazzisi's leadership, did DEA have
22 any process where it maintained any
23 report indicating how many indictments
24 DEA returned following ARCOS leads that

1 had been generated?

2 MR. FINKELSTEIN: Vague.

3 THE WITNESS: Not to my
4 knowledge.

5 MR. FINKELSTEIN: Seems like
6 we are at a pause. Can we take a
7 break?

8 MR. STEPHENS: Sure.

9 THE VIDEOGRAPHER: 9:27. We
10 are off the video record.

11 (Short break.)

12 THE VIDEOGRAPHER: 9:48. We
13 are on the video record.

14 BY MR. STEPHENS:

15 Q. Mr. Prevoznik, let me ask
16 you a couple quick questions and then
17 I'll get back into ARCOS.

18 Okay?

19 A. Sure.

20 Q. You had mentioned at the
21 start today that you had looked at DEA's
22 website and figured out a couple
23 conferences. You gave us that
24 information, right?

1 A. Yes.

2 Q. Okay. As to the 2007
3 conference in Houston, you were not
4 physically present at that conference,
5 right?

6 A. Correct.

7 Q. You did not attend, correct?

8 A. Correct.

9 Q. Okay. All right.

10 Now, one other question.

11 Does a nonregistrant have an obligation
12 to maintain effective controls to prevent
13 diversion?

14 MR. FINKELSTEIN: Vague.

15 THE WITNESS: A

16 nonregistrant?

17 BY MR. STEPHENS:

18 Q. Right.

19 A. They're not within the
20 closed system of distribution.

21 Q. Okay. So they have no duty
22 to maintain effective controls to prevent
23 diversion, correct?

24 MR. FINKELSTEIN: Vague.

1 THE WITNESS: Correct.

2 BY MR. STEPHENS:

3 Q. All right. Turning back to
4 ARCOS. Between 2006 and 2015, did DEA
5 maintain any report that would show how
6 many ARCOS leads got sent to DEA offices
7 in Ohio in any particular year?

8 MR. FINKELSTEIN: Scope.

9 THE WITNESS: Not to my
10 knowledge during that particular
11 period, and we don't do it today,
12 so...

13 BY MR. STEPHENS:

14 Q. Okay. Between 2006 and
15 2015, did DEA have any process that
16 required the ARCOS team to run pattern
17 evaluation tests to verify whether ARCOS
18 was generating high quality investigative
19 leads as opposed to suboptimal
20 investigative leads?

21 MR. FINKELSTEIN: Vague.

22 MS. SINGER: Objection.

23 Foundation.

24 THE WITNESS: Could you

1 explain that?

2 BY MR. STEPHENS:

3 Q. Sure. Pattern evaluation
4 test is a qualitative measure by which
5 you look at a computer program and try
6 and determine whether what the output is,
7 is of high quality or suboptimal quality.
8 Was DEA doing anything along those lines
9 between 2006 and 2015 as it related to
10 ARCOS data?

11 MR. FINKELSTEIN: Vague.

12 THE WITNESS: I don't know.

13 BY MR. STEPHENS:

14 Q. Between 2006 and 2015 under
15 Mr. Rannazzisi's leadership, did DEA have
16 any procedure that required DEA special
17 agent in charges in the various field
18 divisions to report back to DEA
19 headquarters to give process reports
20 about what the field division had done to
21 investigate ARCOS leads?

22 A. Not to my knowledge.

23 Q. Okay. And just for
24 definitional purposes, each DEA field

1 position has a number one agent that runs
2 that field division. That agent's title
3 is a special agent in charge, the SAC,
4 right?

5 A. Correct.

6 Q. SAC. Correct. Was there
7 any policy at DEA between 2006 and 2015
8 that would have prevented the deputy
9 administrator in charge of diversion
10 control from instituting that procedure?

11 A. Not to my knowledge.

12 Q. Between 2006 and 2015, did
13 DEA have any procedure that prevented a
14 field -- that prevents a field division
15 from simply ignoring ARCOS information
16 sent to them by DEA headquarters?

17 A. Not to my knowledge.

18 Q. Was there anything
19 preventing the deputy administrator in
20 charge of diversion control,
21 Mr. Rannazzisi, from instituting a
22 process to ensure that DEA's field
23 divisions would not ignore ARCOS leads in
24 their work?

1 MS. SINGER: Objection.

2 Foundation.

3 MR. FINKELSTEIN: Objection.

4 Foundation. Misstates his title.

5 THE WITNESS: Not to my

6 knowledge.

7 BY MR. STEPHENS:

8 Q. Did the diversion control
9 group under Mr. Rannazzisi's leadership
10 ever form an ARCOS review committee to
11 analyze ARCOS data for leads to identify
12 where diversion was occurring?

13 MR. FINKELSTEIN: Vague.

14 THE WITNESS: Could you
15 please repeat that?

16 BY MR. STEPHENS:

17 Q. Sure. Did the diversion
18 control group under Mr. Rannazzisi's
19 leadership from 2006 to 2015 ever form an
20 ARCOS review committee to analyze ARCOS
21 data for leads to identify where
22 diversion was occurring?

23 MS. SINGER: Objection.

24 Foundation.

1 MR. FINKELSTEIN: Same
2 objection.

3 THE WITNESS: Not to my
4 knowledge.

5 BY MR. STEPHENS:

6 Q. Okay. Between 2006 and
7 2015, under Mr. Rannazzisi's leadership,
8 did DEA ever institute any procedure
9 whereby field divisions were required to
10 establish an ARCOS review committee to
11 analyze any ARCOS leads or information
12 received by the field from DEA
13 headquarters to assess how that
14 information from ARCOS could identify
15 where diversion was occurring in that
16 district?

17 MR. FINKELSTEIN: Vague.

18 THE WITNESS: Not to my
19 knowledge.

20 BY MR. STEPHENS:

21 Q. Was there any policy at the
22 Drug Enforcement Administration between
23 2006 and 2015 that would have prevented
24 Mr. Rannazzisi from doing so?

1 MR. FINKELSTEIN: Vague.

2 THE WITNESS: Not to my
3 knowledge.

4 BY MR. STEPHENS:

5 Q. Between 2006 and 2015 under
6 Mr. Rannazzisi's leadership, did DEA ever
7 institute any procedure whereby field
8 divisions needed to establish an ARCOS
9 review committee to analyze the leads
10 received from DEA to assess how those
11 leads could stop diversion?

12 MR. FINKELSTEIN: Asked and
13 answered. Vague.

14 THE WITNESS: Not to my
15 knowledge.

16 BY MR. STEPHENS:

17 Q. Was there any policy at DEA
18 between 2006 and 2015 that would have
19 prevented Mr. Rannazzisi, who ran the
20 diversion control group, from instituting
21 a procedure where the field divisions
22 needed to establish an ARCOS review
23 committee to analyze the leads
24 received -- or any leads received from

1 DEA headquarters to assess how those
2 leads could stop diversion?

3 MR. FINKELSTEIN: Asked and
4 answered.

5 MS. SINGER: Same objection
6 to lack of foundation.

7 THE WITNESS: Not to my
8 knowledge.

9 BY MR. STEPHENS:

10 Q. Between 2006 and 2015 under
11 Mr. Rannazzisi's leadership, did DEA
12 headquarters ever institute a procedure
13 where it placed diversion investigators
14 at DEA headquarters as opposed to a field
15 division who would be responsible for
16 conducting proactive investigations based
17 on leads generated by ARCOS?

18 MS. SINGER: Objection.
19 Foundation.

20 MR. FINKELSTEIN: Vague.

21 THE WITNESS: Could you
22 please repeat that.

23 BY MR. STEPHENS:

24 Q. Sure.

1 Between 2006 and 2015, under
2 Mr. Rannazzisi's leadership of the
3 diversion control group, did DEA
4 headquarters under Mr. Rannazzisi's
5 leadership ever institute a procedure
6 where it placed diversion investigators
7 at DEA headquarters as opposed to being
8 housed in a field division who would be
9 responsible for conducting proactive
10 investigations based on leads generated
11 by ARCOS?

12 MS. SINGER: Objection.

13 THE WITNESS: At one point
14 there were no DIs in the ARCOS
15 unit. But there are -- there were
16 DIs placed in the ARCOS unit
17 during that period. Kyle Wright
18 was one. Nancy Jackson was one.
19 Noreen Valentine was one. So the
20 investigators were placed into
21 that unit.

22 BY MR. STEPHENS:

23 Q. That's three. Can you
24 identify any others?

1 A. Not off the top of my head.

2 Q. Okay. If -- if the deputy
3 administrator in charge of the diversion
4 control group was concerned that ARCOS
5 information was being ignored by the
6 field division, he could have assembled a
7 full squad of diversion investigators,
8 stationed them at DEA headquarters under
9 his direct command to pursue that ARCOS
10 information, true?

11 MS. SINGER: Objection.

12 Foundation.

13 MR. FINKELSTEIN: Incomplete
14 hypothetical. Calls for
15 speculation.

16 THE WITNESS: Could you
17 please repeat that.

18 BY MR. STEPHENS:

19 Q. Yeah. This is just -- it's
20 like a structural org chart-related-type
21 question. Okay, Mr. Prevoznik?

22 A. Mm-hmm.

23 Q. Verbal. Okay?

24 A. I gotcha. I just want you

1 to repeat the question. That's all.

2 Q. No, fair. I know you do.
3 And I'm going to. I'm just trying to
4 give you a little basis of the -- why I'm
5 asking the question.

6 My question is, if
7 Mr. Rannazzisi was concerned that ARCOS
8 leads were being ignored by the field
9 divisions, he could have assembled a full
10 team of DEA's diversion investigators and
11 stationed that squad at DEA headquarters
12 under his direct command to pursue ARCOS
13 leads, true?

14 MR. FINKELSTEIN: Incomplete
15 hypothetical. Foundation.

16 THE WITNESS: He could do
17 that if he felt that. But I don't
18 know if he ever felt that.

19 BY MR. STEPHENS:

20 Q. Okay. He never did that,
21 right?

22 A. He never did that, and we
23 still haven't done that.

24 Q. Okay. Between 2006 and 2015

1 under Mr. Rannazzisi's leadership, did
2 DEA headquarters ever institute a
3 procedure where it placed diversion
4 investigators at headquarters as opposed
5 to a field division who would be
6 responsible for investigating suspicious
7 order report leads?

8 MR. FINKELSTEIN: I withdraw
9 my objection.

10 THE WITNESS: So for -- our
11 investigations are -- are usually
12 from the field, so the field is
13 investigating, headquarters does
14 not investigate. We support and
15 help coordinate a case. So the
16 actual investigation is done at
17 the field level, not at
18 headquarters.

19 BY MR. STEPHENS:

20 Q. Okay. So if I understand
21 your response, your response to my
22 question is no, headquarters never
23 instituted a procedure where it placed
24 diversion investigators at headquarters

1 as opposed to a field division who would
2 then be responsible for investigating
3 suspicious order report leads, correct?

4 MR. FINKELSTEIN: Do you
5 understand counsel's question?

6 THE WITNESS: I do now.

7 MS. SINGER: Objection.

8 MR. FINKELSTEIN: Okay. You
9 can answer counsel's question.

10 THE WITNESS: No, we did not
11 put anything in there.

12 BY MR. STEPHENS:

13 Q. Okay. I apologize. I've
14 got a double negative here that I just
15 want to confirm. I know what you're
16 saying I think, but let me make sure I've
17 got a clean record. Okay?

18 Between 2006 and 2015, did
19 DEA ever institute a procedure where it
20 placed diversion investigators at DEA
21 headquarters as opposed to a field
22 division to investigate suspicious order
23 report leads?

24 MR. FINKELSTEIN: Asked and

1 answered.

2 THE WITNESS: No.

3 BY MR. STEPHENS:

4 Q. If a deputy administrator
5 who ran division control from 2006 to
6 2015 was concerned that suspicious order
7 report leads were being ignored by the
8 field divisions, he could have assembled
9 a team of DEA's diversion investigators,
10 placed that squad at DEA headquarters
11 under his command to pursue those leads,
12 right?

13 MS. SINGER: Objection.
14 Lack of foundation.

15 MR. FINKELSTEIN: Incomplete
16 hypothetical. Lack of foundation.

17 THE WITNESS: So he could
18 have done that. He didn't do it.
19 And we still haven't done it.

20 MR. FINKELSTEIN: Can I just
21 make sure I'm following this?
22 Because I want to make an
23 appropriate objection.

24 Before you were asking about

1 ARCOS analysis. Now you're asking
2 about SORs, right?

3 MR. STEPHENS: I just had
4 that one question on SORs because
5 it was similar to the ARCOS
6 question.

7 I will be asking him about
8 SORs which is another 30(b)(6)
9 topic here in a little bit,
10 counsel.

11 BY MR. STEPHENS:

12 Q. All right. Let's return
13 back to ARCOS.

14 Okay, Mr. Prevoznik?

15 A. Yes.

16 Q. Yesterday, you had mentioned
17 in 2018 DEA changed its process to
18 provide more information out to
19 registrants that related to ARCOS
20 information?

21 MR. FARRELL: Objection.
22 Foundation.

23 MR. STEPHENS: I'm just
24 trying to -- to get back to where

1 we were yesterday.

2 MR. FINKELSTEIN:

3 Mischaracterizes prior testimony.

4 THE WITNESS: Are you
5 referring to the ARCOS tool?

6 BY MR. STEPHENS:

7 Q. Yes.

8 So you testified yesterday
9 about an ARCOS tool in 2018, right?

10 A. Yes.

11 Q. Okay. I'm going to give you
12 what my understanding of your testimony
13 was. You tell me if I've got anything
14 wrong. Okay?

15 My understanding of what you
16 testified yesterday was in 2018, DEA
17 leadership decided to provide some more
18 information out to registrants from the
19 ARCOS database that DEA had. Is that
20 fair?

21 A. Yes.

22 Q. Okay. And the information
23 that DEA decided to provide, and this
24 was -- I'm sorry. Strike that and re-ask

1 a new question.

2 This was one of your ideas,
3 right?

4 A. Yes.

5 Q. Okay. And this was one of
6 your ideas because you were trying to
7 reduce diversion, right?

8 MS. SINGER: Objection.

9 Foundation.

10 THE WITNESS: Yeah -- yes.

11 BY MR. STEPHENS:

12 Q. Okay. The information in
13 2018 that DEA decided to share was with
14 other -- with other distributors -- was
15 whether other -- let me strike it and
16 restate it.

17 And I'm going to -- I'm
18 going to use like Distributor A,
19 Distributor B, and Distributor C just for
20 illustrative purposes.

21 Okay, Mr. Prevoznik?

22 A. Yes.

23 Q. The information that DEA
24 decided to provide in 2018 to a

1 registrant was the number of other
2 distributors who were supplying a
3 particular customer, true?

4 MR. FINKELSTEIN: Objection.
5 Mischaracterizes.

6 THE WITNESS: It -- it's --
7 it doesn't have to be a
8 distributor. It's a supplier. So
9 it could be manufacturer too. So
10 whoever supplied that base code of
11 drug, it would give the numerical
12 of how many suppliers.

13 BY MR. STEPHENS:

14 Q. Right. Right. So let me
15 state it this way, and you just tell me
16 if I've got it right or I got it wrong.

17 In 2018, if I'm
18 Distributor A, and I'm supplying
19 Customer A, and Distributors B, C, and D
20 are supplying the same Customer A, DEA
21 would tell me, Distributor A, there are
22 three other distributors supplying
23 Customer A.

24 That's the information that

1 was being provided? Do I have that
2 right?

3 A. Almost.

4 Q. Okay. Tell me what --

5 A. Because it would include
6 you.

7 Q. Okay. So you would then --
8 we've got A, B, C and D, right, that's
9 four?

10 A. Correct.

11 Q. So at -- in 2018, what DEA
12 would tell me, Distributor A, is there
13 are four distributors including yourself
14 who are supplying Customer A; is that
15 right?

16 MR. FINKELSTEIN: Hang on.
17 Objection, Counsel. It -- it was
18 Customer A first --

19 MR. STEPHENS: Well, I'm --
20 then I may have misspoken.

21 BY MR. STEPHENS:

22 Q. I don't think I did. Let me
23 restate it, Mr. Prevoznik, and just tell
24 me if I've got it wrong.

1 In 2018, the change that was
2 made was DEA would now tell Distributor A
3 that there are four distributors
4 including yourself who are supplying
5 Customer A; is that right?

6 A. Correct.

7 Q. Okay.

8 A. If I could --

9 Q. Yeah.

10 A. -- just based on the base
11 code. Drug base code.

12 Q. Okay. And what do you mean
13 by that?

14 A. Like hydrocodone. It's not
15 going into specific products. It's
16 hydrocodone.

17 Q. Okay. In 2018, DEA did not
18 tell me, Distributor A, the quantities
19 that were being supplied to Customer A by
20 Distributor B, C, and D, correct?

21 A. Correct.

22 Q. In 2019, DEA amended its
23 process and now provides that
24 information?

1 A. Yes. De-identified.

2 MR. FINKELSTEIN: Note for
3 the record that the witness wasn't
4 authorized to testify about
5 decisions on or after
6 February 2018. But as the witness
7 is knowledgeable, I'll allow
8 testimony.

9 MR. STEPHENS: And -- and,
10 Counsel, for your benefit, I'm
11 just trying to identify time
12 frames and all that so the record
13 is complete. That's it.

14 MR. FINKELSTEIN: Okay.

15 MR. FARRELL: The plaintiffs
16 continue their objection to any
17 attempt by you to establish
18 evidence that's probative of your
19 affirmative defenses and
20 prejudicial to our case in chief.

21 MR. STEPHENS: I understand
22 that you don't want me to get
23 evidence that might hurt your
24 case, Paul, but I think that's my

1 job.

2 And if I understand,
3 yesterday, the testimony from the
4 DEA is the DEA does their job, and
5 I'm not here to testify, but I am
6 here trying to do my job. I hope
7 you respect that. All right.

8 MR. FINKELSTEIN: We don't
9 have copies.

10 MR. STEPHENS: Yes, sir.
11 Yeah, we do.

12 (Document marked for
13 identification as Exhibit
14 DEA-Prevoznik-19.)

15 BY MR. STEPHENS:

16 Q. All right. Mr. Prevoznik,
17 I'm showing you what's been marked as
18 Exhibit Number 19, which is a DEA press
19 release dated February 26, 2019.

20 Do you see that?

21 A. Yes.

22 Q. So in two-thousand -- if you
23 look at the fourth paragraph on the first
24 page, the very first sentence, I think

1 addresses what we had just been talking
2 about, Mr. Prevoznik. It states, "In
3 February 2018, DEA launched a new tool in
4 it's ARCOS online reporting system to
5 assist drug manufacturers and
6 distributors with their regulatory
7 obligations under the Controlled
8 Substances Act."

9 Do you see that?

10 A. Yes.

11 Q. And that refers to your
12 idea, right?

13 A. Yes.

14 Q. And that's where you are
15 giving a distributor the number of
16 distributors supplying to Customer A,
17 right?

18 A. Correct.

19 Q. Okay. If you look at the
20 third sentence in that paragraph, it
21 talks -- it says, "The enhancement will
22 allow a DEA-registered manufacturers and
23 distributors to view and download the
24 number of distributors and the amount,

1 anonymized data, in both grams and dosage
2 units, each distributor sold to a
3 prospective customer in the last
4 available six months of data."

5 Correct?

6 A. Could I get another copy,
7 because the exhibit went off the bottom.
8 Cut off the last part of that sentence.
9 I just want to make sure.

10 MR. FINKELSTEIN: You can
11 look at mine.

12 THE WITNESS: Correct.

13 BY MR. STEPHENS:

14 Q. And the sentence that I just
15 read about providing the volumes, that's
16 the change that DEA made in 2019, right?

17 MR. FINKELSTEIN:
18 Mischaracterizes.

19 THE WITNESS: Correct.

20 BY MR. STEPHENS:

21 Q. Okay. And then if you look
22 at the last paragraph in this DEA press
23 release, it states, "Manufacturers and
24 distributors have consistently expressed

1 a desire for assistance from DEA in
2 fulfilling these obligations and have
3 requested ARCOS information to help them
4 make informed decisions about whether new
5 customers are purchasing excessive
6 quantities of controlled substances."

7 Do you see that?

8 A. Yes.

9 Q. So DEA in 2019 understood
10 that manufacturers and distributors have
11 consistently expressed a desire for
12 assistance from DEA in fulfilling their
13 obligations, and as part of that,
14 requested ARCOS information from DEA,
15 right?

16 MR. FINKELSTEIN: Objection.
17 Form.

18 MS. SINGER: Objection.
19 Foundation.

20 THE WITNESS: Well, over the
21 years they've expressed this is
22 business strategy protected. So
23 we've done -- we've done that.

24 But once the new tool, the

1 first tool went out in 2018, we
2 had feedback from quite a few of
3 the distributors that said, hey,
4 this would be great if we could
5 get de-identified data. So that's
6 why we put it in there. We were
7 able to -- we felt comfortable
8 enough to put that out there,
9 because they had requested it at
10 that point.

11 They had -- to my knowledge,
12 they had not expressed that they
13 wanted that. When we had
14 mentioned it, they were always --
15 that's business data. Don't
16 provide it. So...

17 BY MR. STEPHENS:

18 Q. You would agree that
19 manufacturers and distributors have
20 consistently expressed a desire for
21 assistance from DEA in fulfilling these
22 obligations and have requested ARCOS
23 information to help them make informed
24 decisions, right?

1 MR. FINKELSTEIN:

2 Mischaracterizes. Asked and
3 answered.

4 THE WITNESS: I think I just
5 answered it.

6 BY MR. STEPHENS:

7 Q. Well, is this -- is this
8 press release accurate?

9 A. Well, yeah, because they --
10 because I said, after the first came out,
11 one of the complaints was -- that we've
12 heard a number of times, it's not -- it's
13 not enough.

14 Q. Are you --

15 A. So I'm just relaying what I
16 know from my -- my personal discussions
17 with some of the distributor registrants
18 that asked for that. So that was the
19 first time that I had heard that they
20 wanted that. So -- and then the Support
21 Act came in, and we were -- that was
22 something that we were told that we
23 needed to do, so -- statutorily, so...

24 Q. Mr. Prevoznik, do you view

1 this, sharing of more information with
2 industry, as an example of DEA's current
3 leadership taking additional steps to
4 collaborate with industry to help reduce
5 diversion?

6 MS. SINGER: Objection.

7 Foundation.

8 THE WITNESS: Yes.

9 BY MR. STEPHENS:

10 Q. And do you think that's a
11 good thing?

12 MR. FINKELSTEIN: Vague.

13 THE WITNESS: Yes.

14 BY MR. STEPHENS:

15 Q. All right. Are you familiar
16 with an INNER JOIN process related to
17 database management for databases like
18 ARCOS?

19 MR. FINKELSTEIN: Vague.

20 Hang on. Don't testify based on
21 law enforcement sensitive
22 information.

23 MS. SINGER: Objection.

24 Scope.

1 THE WITNESS: I don't know
2 what an INNER JOIN --

3 BY MR. STEPHENS:

4 Q. Okay. An INNER JOIN process
5 is a common SQL database concept that has
6 been in existence for decades in a
7 relationable database management systems
8 where you can anonymize data and provide
9 data to people who are sending products
10 to the same individuals by using an
11 individual, like customer A here, by
12 using their Tax ID number, their
13 registration number or something along
14 those lines.

15 Is anybody at DEA familiar
16 with INNER JOIN database management
17 protocols from 2006 to 2015 that you're
18 aware of?

19 MS. SINGER: Objection.
20 Scope, and the witness's
21 competence on these issues.

22 MR. FINKELSTEIN: Scope.
23 Calls for speculation.

24 Do you understand the

1 question?

2 THE WITNESS: It sounds like
3 it's a software -- it sounds like
4 to me it's a software question.
5 We do have competent people within
6 DEA. I am not one of the ones who
7 would claim competency for that.

8 MR. FARRELL: Can you spell
9 that, INNER JOIN?

10 MR. STEPHENS: Yeah, it's
11 INNER JOIN, I-N-N-E-R, J-O-I-N.
12 And if you look it up under SQL --
13 SQL database management.

14 BY MR. STEPHENS:

15 Q. All right. So you do have
16 people on staff at DEA who are tasked
17 with understanding ARCOS's capabilities
18 and maximizing the efficiency of ARCOS,
19 true?

20 A. True.

21 Q. And you had mentioned COGNOS
22 yesterday. Can you explain to me again
23 what COGNOS is?

24 A. So COGNOS basically allows

1 you to take huge chunks of data, be able
2 to pull it down, and summarize it or --

3 MR. FINKELSTEIN: Can you
4 spell COGNOS?

5 THE WITNESS: C-O-G-N-O-S, I
6 believe. It's either N-O-S or
7 N-U-S.

8 BY MR. STEPHENS:

9 Q. So COGNOS -- well, let me
10 ask ARCOS first.

11 Is ARCOS a system that DEA
12 built, or is it a system that DEA
13 purchased from a software vendor?

14 MS. SINGER: Objection.
15 Scope.

16 THE WITNESS: It's my
17 understanding it's a system that
18 we built.

19 BY MR. STEPHENS:

20 Q. Okay. So then, if DEA built
21 it, then DEA is going to have the
22 expertise inhouse to understand how it
23 works, right?

24 A. Correct.

1 Q. Okay. And how does COGNOS
2 relate to ARCOS?

3 A. COGNOS is a software that's
4 used so that you can take the ARCOS data,
5 huge quantities of ARCOS data, and be
6 able to actually use it to do an analysis
7 on it.

8 Q. Okay. Is COGNOS software
9 database or software system that DEA
10 purchased from a vendor or did DEA create
11 it?

12 A. I believe it's a vendor.

13 Q. It's a --

14 A. I believe it's IBM.

15 Q. Okay. IBM. A fine company,
16 right?

17 MR. FINKELSTEIN: Scope.

18 MR. FARRELL: If you're
19 representing IBM...

20 MR. STEPHENS: All right.
21 We'll stipulate to that. It's a
22 fine company.

23 BY MR. STEPHENS:

24 Q. All right. But -- but so,

1 you know, part of the function with --
2 with COGNOS and ARCOS is to understand
3 its capabilities. And if an INNER JOIN
4 process would have been beneficial to
5 reducing diversion, you would have hoped
6 that someone at DEA would have worked on
7 that, right?

8 MR. FINKELSTEIN: Scope.

9 Calls for speculation.

10 Foundation.

11 You can answer if you

12 understand.

13 THE WITNESS: I'm not sure I

14 understand. I mean, we've been

15 making improvements with -- with

16 the system since we started so...

17 BY MR. STEPHENS:

18 Q. But can you agree with me

19 that -- that the DEA would want to

20 maximize the efficiency of that ARCOS

21 database to do everything possible in the

22 DEA's powers to reduce diversion?

23 A. Yes.

24 Q. And if using an INNER JOIN

1 process earlier would have been
2 beneficial to that effort, you would have
3 supported it, had you known about it?

4 MS. SINGER: Objection.
5 Foundation.

6 MR. FINKELSTEIN:
7 Foundation. Scope. Incomplete
8 hypothetical.

9 You can answer.

10 THE WITNESS: Me personally?

11 BY MR. STEPHENS:

12 Q. Correct.

13 A. Well, I mean, I'm not in a
14 position to make a decision like that of
15 what software we're going to use.
16 That's -- that's an agency decision.

17 Q. Would you agree that if the
18 people at DEA who are responsible for
19 managing the architecture of this
20 database and its efficiency were aware of
21 an INNER JOIN process earlier and that
22 would have been beneficial to DEA's use
23 of ARCOS, DEA would have supported doing
24 that, right, using an INNER JOIN process?

1 MR. FINKELSTEIN:

2 Foundation, scope. Incomplete
3 hypothetical.

4 You can answer if you
5 understand.

6 THE WITNESS: I'm just
7 having a little bit -- because I
8 don't know what INNER JOIN is.
9 You can tell me it's a SQL. You
10 can tell me whatever. But is
11 it -- does it have to work off the
12 internet? Is it -- you know,
13 that's what I'm saying. I'm not
14 competent enough to -- to be
15 answering that question.

16 BY MR. STEPHENS:

17 Q. Let me just ask a more
18 general question.

19 A. Sure.

20 Q. You would agree with me that
21 if people at DEA who are responsible for
22 managing the architecture of the ARCOS
23 database understood that there was a more
24 efficient way to use ARCOS by making a

1 change, you would have supported them
2 making that change to make it more
3 efficient and effective, true?

4 MS. SINGER: Objection.

5 MR. FINKELSTEIN:
6 Foundation. Incomplete
7 hypothetical.

8 You can answer.

9 THE WITNESS: Yes.

10 BY MR. STEPHENS:

11 Q. Okay. I had asked you one
12 question a little bit earlier about
13 suspicious order reports. I would now
14 like to turn to that topic and ask you a
15 few questions about how and why DEA
16 analyzes suspicious order reports to
17 identify and stop sources of diversion.

18 Okay?

19 A. Yes.

20 Q. This is Topic 9 of your
21 30(b)(6) designation.

22 Now, yesterday you had
23 mentioned, in reporting suspicious order
24 reports, you had said some come to

1 headquarters, and some go to the field,
2 right, if I understood what you said?

3 A. Yes. Per the reg, they are
4 supposed to go to the field. If they --
5 if we've had some sort of action against
6 a registrant, and we directed them to
7 send it to headquarters, those would send
8 it electronically.

9 Q. Okay. And yesterday you had
10 mentioned a "big three," right?

11 A. Yes.

12 Q. Okay. Walmart is not one of
13 the big three, right?

14 A. No.

15 Q. And the other retail chain
16 pharmacies that we've talked about today,
17 they are not part of the big three,
18 right?

19 A. Well, just to clarify, we're
20 talking -- because we started with
21 distributors that you wanted to talk
22 about distributors of, you know, of your
23 chain stores. And then now you're
24 asking -- or you're -- are you talking

1 the distributors of Walmart, or are you
2 talking the pharmacies of Walmart in
3 terms of this?

4 Q. No, no, no -- no, no, no.
5 I'm just trying to say, you had said the
6 big three sends stuff to headquarters,
7 right?

8 A. Right. Distributors.

9 Q. The big three distributors?

10 A. Right.

11 Q. And all I'm saying is -- is
12 that when you said big three, you weren't
13 referring to Walmart, right?

14 A. Well, I just want -- I just
15 want to clarify that we are talking about
16 the big three distributors, because
17 Walmart is a pretty big -- one of the
18 bigger chain pharmacies out there. So I
19 just want to make sure we're clear on
20 that.

21 Q. Right.

22 A. That's all. I'm just
23 clarifying that.

24 Q. Okay, okay. All right.

1 So when you said big three
2 yesterday, were you referring to Walmart
3 or not?

4 A. No.

5 Q. Okay. That -- that's all I
6 was asking, Mr. Prevoznik. I'm sorry.

7 A. Okay.

8 Q. Would you agree that a
9 suspicious order report presents DEA with
10 a possible investigative lead that could
11 result in DEA identifying someone who is
12 diverting controlled substances?

13 MR. FINKELSTEIN: Asked and
14 answered.

15 THE WITNESS: Yes.

16 BY MR. STEPHENS:

17 Q. If DEA investigates
18 suspicious order reports, DEA expects and
19 hopes that those investigations will lead
20 to a reduction in diversion, fair?

21 A. If -- if that's where it
22 leads to. Not every -- not every SORs
23 report is going to lead to diversion.

24 Q. Okay. But does DEA hope

1 that investigations of SORs reports will
2 lead to a reduction in diversion?

3 A. Yes.

4 Q. Has DEA identified sources
5 of diversion based on information it
6 received in suspicious order reports?

7 MR. FINKELSTEIN: Don't
8 testify based on ongoing
9 investigations or enforcement
10 activities.

11 You can answer.

12 BY MR. STEPHENS:

13 Q. Just yes or no.

14 A. Could you repeat, please?

15 Q. Sure.

16 MR. FINKELSTEIN: No current
17 enforcement investigations, yes or
18 no question.

19 Do you want to repeat it?

20 BY MR. STEPHENS:

21 Q. Yes, let -- let me repeat
22 the question. And I'm just asking for a
23 yes or no. This is a baseline question.

24 A. I know, but I have to listen

1 to my instruction too.

2 Q. Understood.

3 Has DEA identified sources
4 of diversion based on information DEA has
5 received in suspicious order reports?

6 A. Yes.

7 Q. Okay. When DEA identifies a
8 source of diversion via information in a
9 suspicious order report, does DEA want to
10 stop the supply of opioids to that source
11 of diversion?

12 A. Yes.

13 Q. And does DEA want to stop
14 the supply of opioids to that source of
15 diversion as soon as DEA learns the
16 identity of the suspected diverter?

17 MR. FINKELSTEIN: Vague.

18 THE WITNESS: Yes.

19 BY MR. STEPHENS:

20 Q. All right. Between 2007 and
21 2018, DEA received over 1.2 million
22 electronic suspicious order reports from
23 registrants.

24 A. Is that a -- it sounds like

1 it was a statement. I'm sorry.

2 Q. It's a question. Is that
3 true?

4 A. Could you -- could you
5 repeat the question.

6 Q. Sure.

7 Between 2007 and 2018 DEA
8 received over 1.2 million electronic
9 suspicious order reports from
10 registrants, true?

11 A. Yes.

12 Q. Let me -- if I could point
13 you back to Exhibit 17, which is the
14 transcript from March -- or the senate
15 congressional record from March 20, 2018.

16 Do you have that in front of
17 you?

18 A. Yes.

19 Q. I direct you to Page 93,
20 Mr. Prevoznik.

21 A. Okay.

22 Q. And this is a Q&A, written
23 Q&A between Congress and DEA, right?

24 A. That's what it looks like.

1 Q. Okay. Question Number 25
2 there on Page 93, Mr. Prevoznik. Are you
3 with me?

4 A. Yes.

5 Q. It says, "How many
6 suspicious order reports does DEA now
7 receive from distributors annually?"

8 Did I read that right?

9 A. Yes.

10 Q. Okay. And the response, on
11 the last sentence at the bottom of Page
12 93 says, "DEA headquarters has received
13 1,204,400 electronic suspicious order
14 reports from 135 distinct registrants
15 from 2007 to 2018."

16 Do you see that?

17 A. Yes.

18 Q. Okay. Does that give you a
19 little bit more precise number that DEA
20 had on March 20th of 2018 when it was
21 reporting back to Congress?

22 A. Yes.

23 Q. Okay. All right. So I have
24 a few questions for you about how DEA

1 analyzes those SORs -- analyzed SORs
2 between 2006 and 2015.

3 Is it fair to say that DEA's
4 current leadership has been working hard
5 to improve how DEA reviews suspicious
6 order reports?

7 A. Yes.

8 Q. Between 2006 and 2015 under
9 Mr. Rannazzisi's leadership, did DEA have
10 a published policy that ensured that
11 someone at DEA would investigate every
12 suspicious order report that DEA
13 received?

14 MS. SINGER: Objection.
15 Lack of foundation.

16 THE WITNESS: Not that I'm
17 aware of.

18 BY MR. STEPHENS:

19 Q. Okay. Was there any policy
20 at DEA that would have prevented
21 Mr. Rannazzisi, who ran the diversion
22 control group, from instituting a
23 practice or policy that ensured that
24 someone from DEA would investigate every

1 suspicious order report that DEA
2 received?

3 MR. FINKELSTEIN: Objection
4 to form.

5 MS. SINGER: Objection.
6 Foundation.

7 THE WITNESS: Not to my
8 knowledge.

9 MR. FINKELSTEIN: For the
10 record, I noticed the witness
11 reached to his binder which
12 contains DEA policies. Do you
13 want to reference that to refresh
14 your --

15 THE WITNESS: Yeah, could
16 I -- could I reference it?

17 MR. STEPHENS: That's fine.
18 Do you want to go off the record
19 and do that? Let's do that.

20 MR. FINKELSTEIN: Well,
21 let's wait until there is a
22 question pending.

23 MR. STEPHENS: Okay. That's
24 fine. I just don't want to burn

1 my time on the clock. If you need
2 to review something, you want to
3 take a break to do it, I'm fine
4 with that, Mr. Prevoznik. Okay?
5 Just let me know.

6 MR. FINKELSTEIN: But you're
7 allowed to review it if you need
8 to to answer his question.

9 THE WITNESS: Right. Thank
10 you.

11 BY MR. STEPHENS:

12 Q. Yeah. Are we good?

13 A. Yeah.

14 Q. Okay. All right. Have you
15 ever heard of a suspicious activity
16 report known as a SAR?

17 A. No. That doesn't --

18 Q. Are you aware in banking
19 circles that banks report SARs --

20 A. Yeah.

21 Q. -- suspicious activity
22 reports, related to suspect transactions
23 that they see traveling through their
24 banks?

1 MR. FINKELSTEIN: Hang on.

2 MS. SINGER: Objection.

3 Scope.

4 MR. FINKELSTEIN: Scope.

5 You can answer if you know.

6 THE WITNESS: Yes.

7 BY MR. STEPHENS:

8 Q. Okay. Mr. Prevoznik, who is
9 the greatest law enforcement agency in
10 the world at investigating money
11 laundering investigations?

12 MS. SINGER: Objection.

13 MR. FINKELSTEIN: Objection.

14 Scope. Calls for speculation.

15 You can answer.

16 THE WITNESS: Do I have to?

17 FBI.

18 BY MR. STEPHENS:

19 Q. Oh, you think it's FBI.

20 Okay. Mr. Prevoznik, hold
21 on. Hold on. Hold on.

22 Mr. Prevoznik, you would
23 agree with me that the Drug Enforcement
24 Administration is one of the greatest law

1 enforcement agencies on the planet
2 investigating money laundering
3 investigations, correct?

4 MR. FINKELSTEIN: Vague.
5 Scope.

6 THE WITNESS: Yes, correct.

7 BY MR. STEPHENS:

8 Q. Okay. And DEA, through
9 OCDETF, the Organized Crime Drug
10 Enforcement Task Force, participates with
11 other agencies, like your colleagues at
12 the FBI, like your colleagues at the IRS,
13 to do the most sophisticated money
14 laundering investigations in the world,
15 right?

16 MR. FINKELSTEIN: Scope.

17 THE WITNESS: Correct.

18 BY MR. STEPHENS:

19 Q. All right. Now, in
20 conducting those money laundering
21 investigations, it's common for the
22 United States government, including DEA,
23 to work on SAR review committees to
24 review SARs to advance the money

1 laundering investigations that they're --
2 that they're working on through banking
3 institutions, right?

4 MS. SINGER: Objection.
5 Scope.

6 MR. FINKELSTEIN: We're well
7 outside the scope.

8 MS. SINGER: This is so far
9 beyond.

10 MR. FINKELSTEIN: You can
11 answer if you know.

12 THE WITNESS: Yeah -- yes.

13 BY MR. STEPHENS:

14 Q. Okay. Between 2006 and
15 2015, under the leadership of
16 Mr. Rannazzisi, did DEA headquarters have
17 a procedure by which it formed a SORs
18 review committee, a suspicious order
19 review committee, at DEA headquarters to
20 analyze all of the SORs received by DEA
21 from registrants?

22 MR. FINKELSTEIN: Vague.

23 MS. SINGER: Lack of
24 foundation.

1 THE WITNESS: No. We still
2 haven't, and you have the SORs
3 that go to the field, as well as
4 the SORs electronically, so...

5 BY MR. STEPHENS:

6 Q. Okay. Is there any central
7 body anywhere within DEA that's organized
8 and formed to review SORs, to have a
9 central point of contact to determine
10 whether a particular SOR would be really
11 good for an investigation for DEA to
12 pursue?

13 MR. FINKELSTEIN: Vague as
14 to time. Vague.

15 BY MR. STEPHENS:

16 Q. Let me restate it.

17 Between 2006 and 2015, under
18 the leadership of Mr. Rannazzisi, was
19 there any central body anywhere within
20 DEA organized and formed to review
21 suspicious order reports so that DEA
22 would have a central point of contact to
23 determine whether a particular suspicious
24 order report should be pursued for an

1 investigation by DEA?

2 MR. FINKELSTEIN:

3 Foundation. Vague.

4 THE WITNESS: Not to my
5 knowledge.

6 BY MR. STEPHENS:

7 Q. Was there any policy at DEA
8 that would have prevented Mr. Rannazzisi
9 from forming a SORs review committee at
10 DEA headquarters to analyze all of the
11 SORs, the suspicious order reports,
12 received by DEA from registrants between
13 2006 and 2015?

14 MR. FINKELSTEIN: Vague.

15 THE WITNESS: Not to my
16 knowledge.

17 BY MR. STEPHENS:

18 Q. Between 2006 and 2015 under
19 Mr. Rannazzisi's leadership, did DEA have
20 any field division institute a SORs
21 review committee to analyze suspicious
22 order reports received from registrants
23 in that field division?

24 A. Not -- no, not for those

1 that received. But we were doing
2 investigations and analysis on those that
3 we never received.

4 Q. Okay. So my question is a
5 little bit different. Let me reframe it.
6 I think I understand your answer.

7 Between 2006 and 2015, under
8 Mr. Rannazzisi's leadership, did any DEA
9 field division form a SORs review
10 committee to analyze all SORs, suspicious
11 order reports, received from registrants
12 in that jurisdiction?

13 MR. FINKELSTEIN: Vague.

14 THE WITNESS: Not to my
15 knowledge.

16 BY MR. STEPHENS:

17 Q. Okay. Was there any policy
18 at DEA between 2006 and 2015, that would
19 have prevented Mr. Rannazzisi from
20 instituting a procedure by which field
21 divisions were required to form a
22 suspicious order review committee to
23 analyze all of the suspicious order
24 reports received within that field

1 division?

2 MR. FINKELSTEIN: Vague.

3 THE WITNESS: Not to my
4 knowledge.

5 BY MR. STEPHENS:

6 Q. Between 2006 and 2015 under
7 Mr. Rannazzisi's leadership, did DEA
8 headquarters institute any policy whereby
9 DEA field divisions were required to
10 DEA -- to update DEA headquarters
11 regarding what, if anything, the field
12 division had done to investigate inbound
13 suspicious order reports?

14 MS. SINGER: Objection.
15 Foundation.

16 THE WITNESS: Could you
17 please repeat that?

18 BY MR. STEPHENS:

19 Q. Sure.

20 Between 2006 and 2015 under
21 Mr. Rannazzisi's leadership, did DEA
22 headquarters institute any policy whereby
23 DEA field divisions were required to
24 update DEA headquarters regarding what,

1 if anything, the field division had done
2 to investigate inbound suspicious order
3 reports the field division had received
4 from registrants?

5 A. Not to my knowledge.

6 Q. Was there any policy at DEA
7 between 2006 and 2015 that would have
8 prevented Mr. Rannazzisi from instituting
9 a practice that required the field
10 divisions to update headquarters about
11 what the field division had done to
12 investigate inbound suspicious order
13 reports?

14 MR. FINKELSTEIN: Vague.

15 MS. SINGER: Objection.

16 Foundation.

17 THE WITNESS: Not to my
18 knowledge.

19 BY MR. STEPHENS:

20 Q. Between 2006 and 2015 under
21 Mr. Rannazzisi's leadership did DEA have
22 any process that would have allowed the
23 diversion control group at DEA
24 headquarters to know what percentage of

1 suspicious order reports were
2 investigated by the field divisions?

3 MR. FINKELSTEIN: Asked and
4 answered.

5 THE WITNESS: Not to my
6 knowledge.

7 BY MR. STEPHENS:

8 Q. Was there any policy at DEA
9 that would have prevented Mr. Rannazzisi
10 and the diversion control group from
11 instituting a practice that required the
12 field division to update headquarters
13 regarding the percentage of SORs reports
14 that the field division had investigated?

15 MR. FINKELSTEIN: Objection.

16 MS. SINGER: Continuing
17 objection to this. Lack of
18 foundation.

19 MR. FINKELSTEIN: Asked and
20 answered.

21 THE WITNESS: Not to my
22 knowledge.

23 BY MR. STEPHENS:

24 Q. Between 2006 and 2015 under

1 Mr. Rannazzisi's leadership, did DEA
2 headquarters have any procedure whereby
3 someone at DEA input the suspicious order
4 reports into any DEA central database for
5 tracking purposes?

6 MR. FINKELSTEIN: Vague.
7 Foundation.

8 THE WITNESS: Could -- we
9 don't input. We don't input it,
10 the registrants -- if it's going
11 in electronically, the registrant
12 sends it in via electronic. We
13 don't input.

14 BY MR. STEPHENS:

15 Q. Okay. I gotcha.

16 Between 2007 and 2015 under
17 Mr. Rannazzisi's leadership, what
18 percentage of suspicious order reports
19 did DEA convert into immediate suspension
20 orders?

21 MR. FINKELSTEIN: Asked and
22 answered.

23 THE WITNESS: I don't know.

24 BY MR. STEPHENS:

1 Q. Okay.

2 (Document marked for
3 identification as Exhibit
4 DEA-Prevoznik-20.)

5 BY MR. STEPHENS:

6 Q. Mr. Prevoznik, I'm showing
7 you what has been marked as DEA
8 exhibit -- or I'm sorry. What has been
9 marked as Exhibit Number 20.

10 Do you have it in front of
11 you?

12 A. Yes, I have it. Yes.

13 Q. Okay. And this is a hearing
14 transcript from January 25, 2018, related
15 to "Combatting the Opioid Crisis:
16 Exploiting Vulnerabilities in
17 International Mail," before the permanent
18 subcommittee on investigations.

19 Do you see that?

20 A. Yes.

21 Q. Okay. And I would direct
22 you to Page 275.

23 A. That's the top number?

24 Q. Yeah, at the top.

1 All right. And -- so let me
2 also direct you to Page 269 which is the
3 second page of this exhibit. Just to set
4 the context, Mr. Prevoznik.

5 A. Okay.

6 Q. So on -- on 269, these are
7 questions for the record, Drug
8 Enforcement Administration before the
9 permanent subcommittee on investigations
10 on January 25, 2018, right?

11 A. Yes.

12 Q. And it's -- it's common for
13 DEA to receive written questions from
14 Congress and then provide written
15 responses, right?

16 A. Yes.

17 Q. Okay. And then if you look
18 at Page 275, there's a question and an
19 answer. Do you see that?

20 A. I'm getting there, yep.

21 Q. Okay. And before we get
22 there, let me ask you one follow-up
23 question.

24 Who at the Drug Enforcement

1 Administration at headquarters was
2 reviewing suspicious order reports, if
3 anybody?

4 A. What time, time period?

5 Q. Say 2018.

6 A. So the field had -- the
7 field has access to it, so the field
8 would review them.

9 Q. Okay.

10 A. That's part of their duties,
11 is to review it.

12 Q. Okay. Between 2006 and
13 2015, was anyone at DEA headquarters
14 reviewing suspicious order reports or was
15 it all done in the field?

16 A. It was done in the field,
17 and I believe it was done at headquarters
18 as well. It would be with Kyle Wright
19 when he was in charge of the unit.

20 Q. Okay. Anybody else at
21 headquarters?

22 A. Not that I'm aware of.

23 Q. Okay. So it would have been
24 Mr. Wright and Mr. Wright's team or

1 squad, right?

2 A. Correct.

3 Q. Okay. Now, turning back to
4 Exhibit Number 20.

5 The -- you'll see that
6 the -- the question is -- well, the --
7 the question states: "The argument has
8 been made in the Washington Post and
9 elsewhere that enforcement efforts at DEA
10 slowed down long before the 2016 law,"
11 right?

12 Do you see that?

13 A. Yes.

14 Q. Okay. And in response, part
15 of the response, "DEA provides actions
16 leading to registration revocation
17 statistics."

18 Do you see that?

19 A. Did you read that from
20 somewhere or?

21 Q. So I'm just looking at
22 the -- at the top of the chart right
23 here, Mr. Prevoznik.

24 A. Oh okay. All right. Yeah,

1 I just wanted --

2 Q. Yeah, sure.

3 A. I wasn't sure exactly where
4 you were. Go ahead.

5 Q. So DEA provided to Congress
6 a chart of statistics in this response,
7 right?

8 A. Yes.

9 Q. And the chart reflects the
10 actions leading to registration
11 revocation for fiscal year 2007 to 2017,
12 right?

13 A. Yes.

14 Q. And the government's fiscal
15 year runs from October 1st to
16 September 30th, right?

17 A. Yes.

18 Q. All right. If you look, the
19 question that I had asked before we went
20 to this chart was whether you knew the
21 percentage of suspicious order reports
22 that DEA converted into immediate
23 suspension orders, right?

24 MR. FINKELSTEIN: Asked and

1 answered.

2 THE WITNESS: Yes.

3 BY MR. STEPHENS:

4 Q. Okay. Now, you would agree
5 with me, wouldn't you, that in the
6 suspension orders that are identified
7 here from 2007 to 2017, not all of those
8 were the result of DEA following up on a
9 suspicious order report; is that fair?

10 MR. FINKELSTEIN: Calls for
11 speculation.

12 THE WITNESS: Well, I mean
13 some of them were because they
14 weren't being filed, so...

15 BY MR. STEPHENS:

16 Q. Okay.

17 MR. FINKELSTEIN: You can
18 finish your answer.

19 THE WITNESS: So they
20 would -- it was registrants that
21 had not filed. So there was
22 action taken against those that
23 did not file. So it would be
24 either -- fall under an ISO, order

1 to show cause, and perhaps they
2 got suspended. There was some
3 administrative action because they
4 did not report them.

5 BY MR. STEPHENS:

6 Q. All right. But my point,
7 Mr. Prevoznik, is simply that the 254
8 immediate suspension orders that are
9 listed here between 2007 and 2017, not
10 every one of them was the result of DEA
11 following up on a suspicious order report
12 that had been sent to DEA; is that fair?

13 MR. FINKELSTEIN: Are you
14 representing to the witness that
15 these numbers add up to 254?

16 MR. STEPHENS: Yes.

17 BY MR. STEPHENS:

18 Q. I will represent to you that
19 for the immediate suspension orders, the
20 totals from 2007 to 2017, is 254. I will
21 represent to you that the order to show
22 cause filed from 2007 to 2017 is 638.
23 And I'll also represent to you that the
24 total column from 2007 to 2017 is 9,851.

1 Okay?

2 A. Okay.

3 MR. FINKELSTEIN: Counsel is
4 telling you that.

5 THE WITNESS: Okay.

6 MR. FINKELSTEIN: We haven't
7 checked his math.

8 MR. STEPHENS: You're
9 welcome to do so.

10 BY MR. STEPHENS:

11 Q. So my question,
12 Mr. Prevoznik, was, would you agree with
13 me that the 254 suspension orders that
14 are listed here from 2007 to 2017, not
15 every one of them was generated as the
16 result of DEA following up on an
17 investigation of a SOR report the DEA had
18 received; is that fair?

19 MR. FINKELSTEIN: Asked and
20 answered.

21 THE WITNESS: Yes.

22 BY MR. STEPHENS:

23 Q. Okay. For today's purposes,
24 let's assume that every one of these 254

1 was generated by the -- were all the
2 result of DEA receiving and investigating
3 a suspicious order report. All right.
4 I'll give you the benefit of that, okay?

5 A. Okay.

6 Q. If you take 254 against the
7 one point -- against the 1,204,400 SORs
8 reports the DEA received, that would
9 equate to something along the lines of
10 2/100 of 1 percent. Do you agree with
11 that?

12 A. I didn't do the math, but
13 I'll go with -- I'll go with you.

14 Q. Okay. So would you agree
15 the DEA would have obtained less than
16 1 percent of immediate suspension orders
17 off the 1.2 million suspicious order
18 reports that DEA received?

19 MR. FARRELL: Objection.

20 Foundation. And I think you just
21 bait and switched here a little
22 bit.

23 MR. STEPHENS: I didn't mean
24 to. So let me check my question.

1 BY MR. STEPHENS:

2 Q. So my question is this:

3 Assuming that all 254 of the immediate
4 suspension orders that DEA received from
5 2007 to 2017 were based off of suspicious
6 order reports, and DEA received
7 1.2 million suspicious order reports, you
8 would agree with me that the percentage
9 of suspicious order reports that DEA
10 converted into immediate suspension
11 orders was less than 1 percent?

12 MR. FINKELSTEIN:

13 Foundation. Misstates prior
14 testimony.

15 THE WITNESS: Well, I mean,
16 I think that's a unique way to
17 look at it. You can also do the
18 flip side and say how many weren't
19 reported that we had cases on.
20 And to just limit it to the ISOs
21 doesn't take you to putting people
22 in compliance, whether through
23 letters of admonition or MOAs that
24 we've come to with companies

1 regarding that.

2 I mean, it's a hypothetical.

3 BY MR. STEPHENS:

4 Q. Between 2007 and 2017, the
5 percentage of suspicious order reports
6 the DEA received and converted into
7 immediate suspension orders is less than
8 1 percent, true?

9 A. Yes. In your hypothetical,
10 true.

11 Q. All right. So between 2007
12 and 2017, the percentage of suspicious
13 order reports that DEA converted into
14 orders to show cause, the 638 here,
15 that's also less than 1 percent. It is
16 .005 or 5/100 of 1 percent?

17 MR. FARRELL: Objection.
18 Foundation.

19 MR. FINKELSTEIN:
20 Foundation. Misstates prior
21 testimony.

22 THE WITNESS: It's a
23 hypothetical. I'll go with you.

24

1 BY MR. STEPHENS:

2 Q. Okay. Between 2007 and
3 2017, if you include everything in the
4 table, orders to show cause, immediate
5 suspension orders filed, voluntary
6 surrenders, the 9,851 totaled from 2007
7 and 2017, the percentage of those against
8 the 1.2 million of suspicious order
9 reports would result in a conversion rate
10 of less than 1 percent?

11 MR. FARRELL: Objection.

12 Fuzzy math.

13 MR. FINKELSTEIN: Which rule
14 is that?

15 Foundation. Misstates prior
16 testimony.

17 You can answer if you
18 understand.

19 BY MR. STEPHENS:

20 Q. Let me ask you a more
21 precise question.

22 A. All right.

23 Q. Okay. What I want you to
24 do, is I'm going to ask about the 9,851,

1 the full total, okay. Are you with me?

2 A. I'm with you.

3 Q. Okay. So between 2007 and
4 2017, if you include the voluntary
5 surrenders, immediate suspension orders,
6 the order to show causes, the percentage
7 of suspicious order reports that DEA
8 converted of the suspicious order reports
9 is less than 1 percent?

10 MR. FINKELSTEIN:

11 Foundation. Misstates prior
12 testimony.

13 THE WITNESS: In your
14 hypothetical situation, yes.

15 BY MR. STEPHENS:

16 Q. Okay. Do you know what
17 percentage of suspicious order reports
18 DEA converted into criminal indictments
19 between 2007 and 2017?

20 MR. FINKELSTEIN: Vague.

21 THE WITNESS: I do not.

22 BY MR. STEPHENS:

23 Q. Do you know -- okay. So
24 between 2007 and 2017, would you know

1 what percentage of suspicious order
2 reports DEA converted into criminal
3 convictions?

4 MR. FINKELSTEIN: Vague.

5 THE WITNESS: I do not.

6 BY MR. STEPHENS:

7 Q. Does DEA keep those kind of
8 statistics?

9 A. No, we don't.

10 Q. Okay. You're aware that DEA
11 keeps those kind of statistics,
12 investigations initiated, indictments
13 returned, convictions obtained on all of
14 their OCDETF cases and reports them. Are
15 you aware of that?

16 A. Correct, yes.

17 Q. Okay.

18 A. I thought you were asking
19 specific to suspicious order reports.

20 Q. I absolutely was.

21 Is there a reason why DEA
22 does not report the number of indictments
23 returned, investigations initiated, and
24 convictions obtained based on information

1 from suspicious order reports like it
2 does in its OCDETF reporting where it
3 identifies investigations initiated,
4 indictments returned, convictions
5 obtained?

6 MR. FINKELSTEIN: Calls for
7 speculation.

8 And I instruct you not to
9 answer based on internal
10 deliberative communications.

11 THE WITNESS: We do have
12 those statistics for that. But
13 not based off of a SOR lead or an
14 ARCOS lead. Those are just
15 pointers. There's various other
16 factors get into what a case --
17 how a case started, where it went,
18 and what its final disposition
19 was.

20 (Document marked for
21 identification as Exhibit
22 DEA-Prevoznik-21.)

23 BY MR. STEPHENS:

24 Q. Okay. Mr. Prevoznik, I'm

1 showing you what's been marked as Exhibit
2 Number 21.

3 MR. STEPHENS: I'm sorry,
4 Counsel.

5 MR. FINKELSTEIN: We're
6 going to attempt to claw 21 back
7 too.

8 MR. STEPHENS: Basis?

9 MR. FINKELSTEIN:
10 Deliberative process.
11 Attorney/client. 21 is an e-mail
12 attaching, I can't remember what
13 exhibit number, but we previously
14 notified you that we were going to
15 clawback.

16 MR. STEPHENS: This one?

17 MR. FINKELSTEIN: Yes.

18 MR. STEPHENS: Okay. I sent
19 this one in -- to counsel on
20 Monday with a stack of potential
21 exhibits and didn't hear anything
22 back.

23 MR. FINKELSTEIN: And we're
24 telling you, as we told you

1 yesterday, that we're attempting
2 to claw it back.

3 If you ask the witness
4 questions I'll instruct him not to
5 answer.

6 MR. BENNETT: Okay. And --
7 and for the record, you did send
8 that to me. I was never able to
9 access it and open it. So I never
10 reviewed your documents. They
11 didn't come through.

12 MR. STEPHENS: All right.
13 So I didn't hear that back --

14 MR. BENNETT: Well, and I
15 was traveling, so -- yeah, you're
16 right --

17 MR. STEPHENS: Okay. But
18 again for the record --

19 MR. BENNETT: But I never
20 looked at them.

21 MR. STEPHENS: That's fine.

22 For the record, James, I
23 sent it to everybody on the DEA
24 team. Okay?

1 Everyone who is counsel here
2 today, all four of you received
3 that from me.

4 MR. FINKELSTEIN: And you
5 have our answer.

6 MR. FARRELL: Okay. So just
7 to be clear, am I allowed to read
8 this or not allowed to read this?

9 MR. FINKELSTEIN: We're
10 attempting to claw it back.

11 MR. STEPHENS: And -- and
12 for the record, let me apologize.
13 If this was used yesterday, I am
14 down at the end of the table, I
15 didn't get a copy of it. So I --
16 I wasn't aware -- I reserve, as my
17 colleague reserves, our position
18 on this document.

19 BY MR. STEPHENS:

20 Q. Mr. Prevoznik?

21 MR. FARRELL: Not to be
22 rude, but is there an expected
23 break time soon?

24 MR. STEPHENS: Yeah, like

1 five minutes.

2 MR. FARRELL: And then after
3 that, what do you think?

4 MR. STEPHENS: Yeah, I'll
5 need to confer with my colleagues.

6 MR. FARRELL: Oh, so you're
7 getting close?

8 MR. STEPHENS: Yes.

9 BY MR. STEPHENS:

10 Q. Mr. Prevoznik, in enforcing
11 the Controlled Substances Act does DEA
12 believe that every individual is entitled
13 to due process in every investigation
14 that DEA conducts to enforce the
15 Controlled Substances Act?

16 MR. FINKELSTEIN: Scope.
17 Calls for a legal conclusion.

18 You can answer.

19 THE WITNESS: Yes.

20 BY MR. STEPHENS:

21 Q. Does DEA believe that the
22 DEA must assess the facts as to each
23 individual actor separately to determine
24 whether an individual has violated the

1 Controlled Substances Act?

2 A. Yes.

3 Q. DEA would not take the
4 actions of a few bad actors and seek to
5 indict everyone who might live in the
6 same neighborhood as those bad actors,
7 fair?

8 A. Correct.

9 MS. SINGER: Objection.
10 Scope.

11 BY MR. STEPHENS:

12 Q. You'd agree that simply
13 being close in proximity to a bad actor
14 does not mean that an individual has done
15 anything wrong, right?

16 MR. FINKELSTEIN: Vague.
17 You can answer.

18 THE WITNESS: Correct.

19 BY MR. STEPHENS:

20 Q. For example, if someone
21 overdoses on Colombian cocaine in
22 Cleveland, would DEA arrest every
23 Colombian native who leaves in Cleveland
24 and charge them for causing that

1 overdose?

2 MR. FINKELSTEIN: Scope.

3 Incomplete hypothetical.

4 MR. FARRELL: This has a
5 traumatic impact upon like the
6 Colombian nationality, so you have
7 to be careful here.

8 MR. STEPHENS: Trust me. I
9 always was.

10 BY MR. STEPHENS:

11 Q. Can you answer the question?

12 A. Not to my knowledge.

13 Q. You'd agree that DEA needs
14 individualized proof to establish exactly
15 who caused that overdose death before
16 deciding to charge anyone with a crime,
17 right?

18 MR. FINKELSTEIN: Hang on.

19 Incomplete hypothetical. Scope.

20 THE WITNESS: Can you repeat
21 it?

22 BY MR. STEPHENS:

23 Q. You would agree the DEA
24 needs individualized proof to establish

1 exactly who caused that overdose death
2 before deciding to charge anyone with a
3 crime?

4 MS. SINGER: Objection.
5 Scope.

6 THE WITNESS: Yes.

7 BY MR. STEPHENS:

8 Q. Okay. And to counsel's
9 point, it might be a mistake for DEA to
10 assume it was a Colombian native who sold
11 the cocaine to the victim, right?

12 MR. FINKELSTEIN: Incomplete
13 hypothetical. Vague.

14 THE WITNESS: Yes.

15 BY MR. STEPHENS:

16 Q. Okay. And it's important
17 not to bring any potential bias in
18 analyzing evidence because it could cloud
19 the judgment of the investigator, right?

20 MR. FINKELSTEIN: Vague.
21 Incomplete hypothetical.

22 MS. SINGER: Scope.

23 THE WITNESS: Yes.

24 BY MR. STEPHENS:

1 Q. You would agree that due
2 process principles that existed in our
3 legal system for generations demand that
4 DEA not haul innocent actors into court
5 to answer for the actors for a few bad
6 actions?

7 MS. SINGER: Scope. And
8 calls for a legal analysis and
9 conclusion.

10 MR. FINKELSTEIN: Scope.
11 Calls for a legal conclusion. And
12 based on your representation that
13 it will be about five minutes, I'm
14 going to let the witness answer.

15 MR. STEPHENS: Two minutes.

16 THE WITNESS: Correct.

17 BY MR. STEPHENS:

18 Q. And DEA agrees that those
19 due process principles still protect
20 innocent actors even when the legal issue
21 involves something as tragic as a heroin
22 overdose, right?

23 MS. SINGER: Continuing
24 objection.

1 MR. FINKELSTEIN: Calls for
2 a legal conclusion. You can
3 answer.

4 THE WITNESS: Correct.

5 BY MR. STEPHENS:

6 Q. Does DEA believe that the
7 same due process principles that require
8 individualized proof also apply to the
9 diversion investigations DEA conducts to
10 enforce the provisions of the Controlled
11 Substances Act?

12 MR. FINKELSTEIN: Calls for
13 a legal conclusion. You can
14 answer.

15 THE WITNESS: I was waiting
16 to see -- correct.

17 BY MR. STEPHENS:

18 Q. And you would agree that
19 every manufacturer, distributor, and
20 retail chain pharmacy is entitled to
21 individualized review of its own conduct
22 before being accused for potential
23 violations of the Controlled Substances
24 Act committed by someone else?

1 A. Correct.

2 Q. For example, you'd agree
3 that DEA should not accuse a retail chain
4 pharmacy of diversion committed by a
5 rogue internet pharmacy where there is no
6 evidence showing any connection between
7 the retail chain pharmacy and -- and the
8 rogue internet pharmacy?

9 MR. FINKELSTEIN: Incomplete
10 hypothetical.

11 MR. STEPHENS: I'll withdraw
12 the question.

13 All right. Let me take a
14 break.

15 THE VIDEOGRAPHER: The
16 parties agree?

17 MR. FINKELSTEIN: Yes.

18 THE VIDEOGRAPHER: 10:57.
19 We are off the video record.

20 (Short break.)

21 THE VIDEOGRAPHER: 11:34, we
22 are on the video record.

23 MR. STEPHENS: I think I'm
24 at the end of my questions. I do

1 have one question for you though,
2 David, and it's to make sure that
3 I understand your complete basis
4 for clawing back the document
5 which is the -- I think it was
6 marked Number 12. It's the
7 June 3rd, 2017, communication
8 between Mr. Patterson and
9 Mr. Rosenberg that includes a
10 communication from AUSA and Leslie
11 Wizner from Detroit.

12 MR. FINKELSTEIN: Correct,
13 the basis for the clawback request
14 was that this document is
15 deliberative process, intra-DOJ
16 discussions regarding improvements
17 and enforcement protocols under
18 the Controlled Substances Act and
19 also attorney/client privilege.

20 MR. STEPHENS: Thank you.
21 And at this point we'll pass the
22 witness.

23 Thank you for your time,
24 Mr. Prevoznik.

1 THE WITNESS: Thank you.

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. FARRELL:

6 Q. Will you state your name,
7 rank, and title?

8 A. Thomas Prevoznik. I am the
9 acting section chief of pharmaceutical
10 investigations for the DEA's diversion
11 control division.

12 Q. Mr. Prevoznik, my name is
13 Paul Farrell, and I am one of the lawyers
14 representing the plaintiffs. And so I
15 thank you for coming here today. And I
16 just wanted to set for the record, we
17 sent a list of subject matters to the
18 United States Drug Enforcement Agency and
19 asked for somebody to be designated to
20 testify on its behalf.

21 You understand that the
22 questions that I ask you today are not in
23 your individual capacity, but we're
24 asking for answers as if it was coming

1 from the DEA itself.

2 A. Correct.

3 Q. So the million-dollar
4 question right out of the gate is, why
5 didn't the DEA do more?

6 So what I want to do is, I
7 have the testimony from the former acting
8 administrator, Robert Patterson. And I'm
9 going to show you a video clip and then
10 ask some follow-up questions. Okay?

11 MS. MAINIGI: Objection.

12 THE WITNESS: Okay.

13 MR. FARRELL: 523.

14 BY MR. FARRELL:

15 Q. This is Mr. Patterson's
16 opening statement I believe his testimony
17 before Congress on March 20, 2018, in
18 front of the subcommittee on oversight
19 and investigations, the committee on
20 Energy and Commerce.

21 You're aware that
22 Mr. Patterson testified?

23 A. Yes.

24 Q. And he testified on behalf

1 of the DEA?

2 A. Yes.

3 Q. To Congress under oath?

4 A. Yes.

5 MR. FARRELL: Show the first
6 clip, please.

7 (Video clip played as
8 follows:)

9 MR. PATTERSON: Where
10 license revocation is not
11 necessary, we've aggressively
12 pursued civil actions and MOUs
13 designed to ensure compliance.
14 Over the last decade, DEA has
15 levied fines totalling nearly
16 \$390 million against opioid
17 distributors nationwide and
18 entered into MOUs with each.

19 (Video concluded.)

20 BY MR. FARRELL:

21 Q. Mr. Prevoznik, can you
22 verify the accuracy of that statement?

23 A. Yes.

24 Q. So the DEA has in fact

1 attempted to impose civil penalties and
2 conducted investigations into opioid
3 distribution and diversion?

4 A. Correct.

5 Q. I'm going to go to the next
6 clip. This is where the follow-up really
7 begins.

8 (Video clip played as
9 follows:)

10 MR. PATTERSON:

11 Administrative actions, civil
12 fines, and criminal cases are all
13 important steps. Where we have
14 fallen short in the past, it is by
15 not proactively leveraging the
16 data that has been available to
17 us.

18 (Video concluded.)

19 BY MR. FARRELL:

20 Q. Mr. Prevoznik, are you
21 familiar with that complaint?

22 A. Yes.

23 Q. I'm also going to show you
24 what has been previously referenced in

1 this trial, the jury has heard probably
2 several times, is the Energy and
3 Commerce's report following the testimony
4 of Mr. Patterson as well as the testimony
5 from numerous others.

6 Are you familiar with this
7 report?

8 A. Yes, I am.

9 Q. And this is on one
10 particular page, one of the findings and
11 the markings up are the lawyers, not from
12 Congress. You'll see where I put the
13 Star. And it basically says, "Had
14 HDA" -- "Had DEA more proactively used
15 ARCOS data, it could have discovered, in
16 a period of time at a place called
17 Sav-Rite Pharmacy Number 1 that there
18 were a lot of pills that were shipped."

19 Are you familiar with this
20 finding from Congress?

21 MS. MAINIGI: Objection.

22 THE WITNESS: Yes.

23 BY MR. FARRELL:

24 Q. So when you and I walk

1 through the ARCOS data, what we're
2 talking about is this dataset of
3 information that you had, correct?

4 A. Correct.

5 Q. And these are transactions
6 between manufacturers and distributors,
7 between distributors and pharmacies, that
8 are stored in a large database maintained
9 by the DEA?

10 A. Correct.

11 Q. Okay. So what -- what does
12 it mean when the DEA's position is that
13 you are not proactively using the ARCOS
14 data during this time frame?

15 A. Well, back during that time
16 frame, we were on what we called the
17 mainframe. So the process was slower of
18 ARCOS data, so when it would be uploaded
19 and processed. And so we were months
20 behind on getting that data up into the
21 system.

22 It was -- we were restricted
23 to a million transactions of upload per
24 night. And we received millions of

1 transactions. So that took a while.

2 In addition to that, you
3 also had, when they uploaded, there would
4 be errors, the most typical errors would
5 be wrong NDC code, wrong DEA number, or
6 the wrong DEA 222 order form number.

7 Q. It's my understanding that
8 today these transactions are stored
9 digitally with the DEA ARCOS database; is
10 that correct?

11 A. Correct.

12 Q. And now we are able to
13 presently and retrospectively look back
14 and figure out what happened. Is that
15 fair?

16 MS. MAINIGI: Objection.

17 MR. EPPICH: Object to form.

18 MR. STEPHENS: Objection.

19 MR. O'CONNOR: Object to
20 form.

21 THE WITNESS: Yes.

22 BY MR. FARRELL:

23 Q. Okay. Now, this may be a
24 terrible analogy, but my mind, what I'm

1 thinking is, just like -- let's say if
2 the NSA keeps a log of everybody's cell
3 phone calls in the country, they're not
4 actively listening to everyone's call,
5 but they have the ability to go backwards
6 and piece together what happened. Is
7 that similar to what the DEA was doing
8 with ARCOS?

9 MS. MAINIGI: Objection.

10 MR. STEPHENS: Objection.

11 THE WITNESS: Yes.

12 BY MR. FARRELL:

13 Q. Same thing with the SEC.
14 There are billions of trades that happen
15 on Wall Street, but the SEC isn't
16 necessarily the clearinghouse for these
17 trades, but it has the capacity to look
18 on a computer backwards and figure out
19 what happened if somebody broke the law.
20 Is that akin to what is going on with the
21 DEA and ARCOS during this time frame?

22 MR. EPPICH: Objection to
23 form.

24 MR. STEPHENS: Objection.

1 THE WITNESS: Yes.

2 BY MR. FARRELL:

3 Q. So going back and looking
4 backwards from this very same energy and
5 commerce report, I happened to be
6 familiar with it because of the West --
7 because of West Virginia. The Sav-Rite
8 Pharmacy from Page 125, Congress went
9 back and looked at the old ARCOS data.
10 And from it, what it's determined was
11 that McKesson Corporation -- are you
12 familiar with the company called
13 McKesson?

14 A. Yes, I am.

15 Q. And who are they?

16 A. They are a wholesaler,
17 distributor.

18 Q. McKesson Corporation sold
19 five million doses in 2006 and 2007 of
20 opium pills to a pharmacy in Kermit, West
21 Virginia. Can you, by looking at this
22 exhibit, tell me how many people,
23 according to Congress, live in Kermit,
24 West Virginia?

1 MR. STEPHENS: Objection to
2 form and scope.

3 MR. O'CONNOR: Objection.

4 MR. EPPICH: Objection.
5 Foundation.

6 THE WITNESS: 406.

7 BY MR. FARRELL:

8 Q. All right. So under any
9 reasonable -- is there any possibly way
10 that a town of 406 has a medical need for
11 over five million pills of opium in a
12 span of two years?

13 MR. EPPICH: Objection.
14 Foundation. Calls for
15 speculation. Scope.

16 MR. STEPHENS: Scope as
17 well.

18 MR. FINKELSTEIN: I'll join
19 the scope objection.

20 You can answer if you
21 understand.

22 THE WITNESS: Could you
23 repeat it, please, one more time?

24 BY MR. FARRELL:

1 Q. Yeah. Is there any basis
2 that you can make up in reality or
3 otherwise where a town of 400 people have
4 a medical need for five million pills of
5 opium in a span of 24 months?

6 MR. EPPICH: Objection.
7 Form. Foundation. Scope. Calls
8 for speculation.

9 THE WITNESS: Correct.
10 There isn't. There isn't.

11 BY MR. FARRELL:

12 Q. There is absolutely no way,
13 is there?

14 MR. EPPICH: Same
15 objections.

16 THE WITNESS: No.

17 BY MR. FARRELL:

18 Q. So while some people may ask
19 the DEA why you didn't catch this, my
20 question to the DEA is why didn't you
21 indict McKesson?

22 MR. EPPICH: Objection to
23 form --

24 MR. FINKELSTEIN: I'm going

1 to instruct you not to answer
2 that.

3 MR. EPPICH: -- calls for a
4 legal conclusion. Scope.
5 Foundation.

6 THE WITNESS: Based on my
7 attorney's advice I'm not going to
8 answer that.

9 MR. FARRELL: Go to the next
10 video clip, please.

11 (Video clipped played as
12 follows:)

13 ROBERT PATTERSON: I think
14 when you go back to that time
15 frame on the suspicious orders
16 reports, there was two major
17 failures --

18 MR. FARRELL: Stop right
19 there for a second.

20 ROBERT PATTERSON: -- there
21 was either a lack of information
22 contained therein. Or not filing
23 them in -- in this instance that
24 they had.

1 I -- I think that started
2 the problem, quite frankly, and a
3 lot of the frustration came from
4 chasing down the registrants and
5 ultimately reminding them of their
6 responsibility in this regulated
7 area.

8 (Video concluded.)

9 MR. FARRELL: So I'm going to
10 strike that and we're going to
11 start over, because I didn't lay a
12 proper foundation for that part.

13 BY MR. FARRELL:

14 Q. Beyond the opening statement
15 from the DEA to Congress through
16 Mr. Patterson here, there were also
17 questions and answers.

18 So one of the questions
19 Congress asked the DEA was: Why did the
20 DEA communications with industry fail to
21 prevent the kinds of major breakdowns
22 apparent in West Virginia?

23 I'm going to play for you
24 Mr. Patterson's response.

1 (Video clip played as
2 follows:)

3 ROBERT PATTERSON: I think
4 when you go back to that time
5 frame on the suspicious orders
6 reports, there was two major
7 failures. One was either a lack
8 of information contained therein,
9 or not filing them in -- in this
10 instance that they had. I think
11 that started the problem, quite
12 frankly, and a lot of the
13 frustration came from chasing down
14 the registrants and ultimately
15 reminding them of their
16 responsibility in this regulated
17 area.

18 (Video concluded.)

19 BY MR. FARRELL:

20 Q. My first question to you is,
21 is which registrants is he referencing?

22 MR. EPPICH: Objection.

23 MR. NICHOLAS: I'm going to
24 object on the basis that we're

1 talking about different
2 geographical -- with different
3 geography, this is a Track 1 case
4 relating to Track 1 jurisdictions
5 only. I object on that basis.

6 These are questions about
7 West Virginia?

8 MR. FARRELL: Yes, sir. So
9 for the purposes of creating a
10 record, I understand that you're
11 preserving that right on CT 1.
12 However, the DOJ has requested
13 that we not put up Mr. Prevoznik
14 for all 1600 cases and would
15 prefer him to just to testify
16 once.

17 So to the extent this is
18 relevant to CT 2, I'm going to go
19 down this line.

20 MR. NICHOLAS: Are you
21 saying that you're not going to
22 introduce this portion of the
23 testimony or seek to introduce it
24 in the Track 1 case?

1 MR. FARRELL: No. What I'm
2 saying is you preserved your
3 objection to this for the CT 1,
4 and we haven't made a decision on
5 what we'll present in CT 1 or
6 CT 2.

7 MR. NICHOLAS: I made my
8 objection.

9 MR. EPPICH: I'll further
10 object that this -- this line of
11 questioning lack -- he lacks
12 foundation for it. Calls for
13 speculation.

14 MR. FARRELL: Who do you
15 represent?

16 MR. EPPICH: McKesson.

17 MR. FARRELL: Okay. Pretty
18 good.

19 BY MR. FARRELL:

20 Q. Okay. Back on -- back on
21 the questions.

22 My question to you is, who
23 is the DEA referencing when they are
24 talking about chasing down registrants.

1 Are we talking about the
2 wholesale distributors?

3 A. Yes.

4 MR. EPPICH: Objection.
5 Form. Foundation.

6 BY MR. FARRELL:

7 Q. And then it says that the
8 DEA was -- part of their frustration was
9 having to chase down the registrants and
10 remind them of their responsibilities.

11 Can you explain what that
12 means?

13 What does the DEA mean when
14 it says this to Congress?

15 MR. EPPICH: Objection to
16 form. Calls for speculation.

17 THE WITNESS: It means that
18 we, with our letters in 2006, we
19 were reiterating what their
20 responsibility was to report
21 suspicious orders. They may
22 needed to -- that the registrants
23 needed to meet effective controls
24 to guard against diversion.

1 BY MR. FARRELL:

2 Q. Was it the DEA's assessment
3 during this time frame, which is 2006 and
4 2007, was that the wholesale distributors
5 as an industry were not complying with
6 their regulatory duties?

7 MR. STEPHENS: Object to
8 form.

9 MR. FARRELL: Excuse me.
10 Let me -- let me make sure I
11 finish my question before you make
12 your objection and let -- and then
13 we'll get it all preserved.

14 MR. STEPHENS: I thought you
15 were finished.

16 MR. FARRELL: So --

17 MR. STEPHENS: I wanted to
18 make sure I had the objection
19 lodged before he answered the
20 question. I apologize.

21 MR. FARRELL: No question.

22 So let me repeat the
23 question.

24 BY MR. FARRELL:

1 Q. Was it the DEA's assessment
2 during the time frame of 2006 and 2007
3 that the wholesale distributors, as an
4 industry, were not complying with their
5 regulatory duties?

6 MR. STEPHENS: Object to
7 form.

8 THE WITNESS: Correct.

9 BY MR. FARRELL:

10 Q. Now, we're going to go to
11 the next clip.

12 The follow-up with the DEA
13 is that a congressman asked the DEA about
14 the settlements with industry in the
15 past. And asked them why the past
16 settlements were not effective in
17 achieving compliance.

18 Here is Mr. Patterson's
19 response on behalf of the DEA.

20 (Video clip played as
21 follows:)

22 ROBERT PATTERSON: And
23 again, this goes back to the
24 frustration of the day. And I

1 know that the -- the folks that
2 were in diversion back in 2010 and
3 2012 struggled with the fact that
4 these MOU or MOAs had been put in
5 place with these companies and
6 they blatantly violated them
7 again.

8 (Video concluded.)

9 BY MR. FARRELL:

10 Q. So my question to you is, is
11 what can the DEA do if the civil
12 penalties that they are imposing are not
13 prohibitive or do not cause the wholesale
14 distributors to change their conduct?

15 MS. MAINIGI: Objection.

16 Scope. Objection to form.

17 MR. EPPICH: Object to the
18 form. Calls for speculation.

19 THE WITNESS: Okay. We
20 could take -- we could file an
21 order to show cause on them. If
22 we could show imminent danger to
23 the public, we could file an ISO
24 against them. We could perhaps

1 take other civil action or an
2 injunctive action against the
3 company, or we could criminally
4 prosecute.

5 BY MR. FARRELL:

6 Q. Was the DEA in fact
7 frustrated that registrants were
8 blatantly violating the MOUs from prior
9 administrative actions?

10 MR. EPPICH: Object to form.

11 THE WITNESS: Yes.

12 BY MR. FARRELL:

13 Q. And which registrants are we
14 talking about in particular?

15 MS. MAINIGI: Objection.

16 Scope. I would like to go ahead
17 and get an objection on the record
18 and get a response from DOJ as
19 well as it relates to individual
20 defendants or individual
21 registrants.

22 Our understanding is that
23 individual registrants or
24 defendants are outside the scope

1 of this deposition.

2 MS. SINGER: Just to respond
3 to that, I think counsel for
4 defendants asked numerous
5 questions about whether Rite Aid
6 or Walmart or various different
7 entities engaged in certain
8 conduct.

9 This is consistent with that
10 testimony that defendants
11 themselves have elicited.

12 MS. MAINIGI: It has nothing
13 to do with the scope of what has
14 been allowed by the --

15 MR. STEPHENS: Nor was I
16 talking about current or former
17 investigations.

18 MR. FINKELSTEIN: Well,
19 you're certainly not authorized to
20 talk about current investigations.

21 Topic 2 is about enforcement
22 activities. The clarification is,
23 with respect to the type of
24 enforcement activities, counsel

1 for plaintiffs explained that
2 plaintiffs seek information
3 regarding administrative actions
4 and/or settlements that DEA has
5 entered into with any of the
6 defendants, and our response is
7 Mr. Prevoznik is authorized.

8 So I'm not going to stop the
9 witness from answering that
10 question.

11 MS. MAINIGI: Mr. Prevoznik
12 is authorized to speak as to what?

13 Because with respect to our
14 Touhy requests, as I understand
15 it, and there may be somebody who
16 has it more at their fingertips
17 than I do, I believe that you
18 indicated that there could not be
19 questioning as it relates to
20 individual companies. And I think
21 it's clearly stated in the
22 response to one of the topics,
23 either 2 or 3, I believe.

24 MR. FARRELL: I'll tell you

1 what. It's ten till 12:00. If
2 it's okay with the DOJ, why don't
3 we take a lunch break now, and we
4 can argue about this during lunch.

5 MR. FINKELSTEIN: Sure.

6 THE VIDEOGRAPHER: 11:53, we
7 are off the video record.

8 - - -

9 (Lunch break.)

10 - - -

11 A F T E R N O O N S E S S I O N

12 - - -

13 THE VIDEOGRAPHER: 1:09. We
14 are on the video record.

15 - - -

16 EXAMINATION

17 (Continued)

18 - - -

19 BY MR. FARRELL:

20 Q. Mr. Prevoznik, when we took
21 our lunch break, the last question and
22 answer was followed by a bunch of
23 objections. And so what I'm going to do
24 is I'm going to withdraw the question

1 that -- where I asked you generally which
2 registrants we are talking about.

3 And I'm going to go and give
4 you more specific information.

5 So the last question that
6 was pending and answered, I asked: "Was
7 the DEA in fact frustrated that
8 registrants were blatantly violating the
9 MOUs from prior administrative actions?"

10 And your answer was: "Yes."

11 There were appropriate
12 objections that were made that will be
13 resolved one day in the future. So
14 here's where my follow-up questions
15 comes.

16 A. Okay.

17 Q. Does that include Cardinal
18 Health's 2008 MOU and settlement which
19 resulted in a second DEA fine?

20 A. Yes.

21 MS. MAINIGI: Objection.

22 Objection. Scope. Objection.

23 Form. Let me just go ahead and

24 begin at least noting, and then

1 someone else may continue, the
2 fact that there was a discussion
3 off the record during the lunch
4 break between us, DOJ, as well as
5 the plaintiffs about the scope of
6 what DOJ has allowed. I don't
7 think that there was resolution of
8 that, but for the record,
9 defendants do object to this
10 ongoing line of questioning which
11 involves discussion of individual
12 defendants or individual actions
13 that have been taken in the past
14 against defendants.

15 MR. EPPICH: And for the
16 record, McKesson further objects
17 to the scope of this as really
18 outside the Touhy request. You
19 know, the defendants are -- see
20 this as seeking non-public
21 information, information on
22 ongoing investigations,
23 investigation that may implicate
24 the deliberative process or to the

1 specific activities of the DEA.

2 The defendants have not been
3 permitted to question into these
4 lines with other witnesses or
5 yesterday, and the defendants
6 simply are requesting equality in
7 the application of the Touhy. And
8 that will be our objection on the
9 record.

10 MR. FINKELSTEIN: To be as
11 clear as I possibly can about the
12 scope of the authorization in the
13 hope that we don't have to keep
14 having this conversation, what we
15 have authorized is information
16 regarding administrative actions
17 and/or settlements that the DEA
18 has entered into with the
19 defendants in this case.

20 What we have not authorized
21 is information regarding
22 investigations that haven't
23 resulted in settlements, or
24 investigative techniques, or for

1 that matter deliberative process
2 or law enforcement sensitive
3 information.

4 I will continue to make
5 appropriate objections, and where
6 appropriate instruct the witness
7 not to answer. The defendants
8 have made their objections and
9 have preserved them for the
10 record.

11 You can answer.

12 BY MR. FARRELL:

13 Q. Does that include McKesson's
14 2008 MOU and settlement which resulted in
15 a second DEA fine?

16 MR. EPPICH: Objection.
17 Scope.

18 THE WITNESS: Yes.

19 BY MR. FARRELL:

20 Q. I'm not going to play this
21 video clip. Instead I'm going to ask it
22 in a form of a question.

23 During the same testimony
24 acting -- is it administrator?

1 A. Yes.

2 Q. Acting Administrator Robert
3 Patterson testified that the DEA has
4 1,500 people to monitor 1.73 million
5 registrants. Is that an accurate number?

6 MR. EPPICH: Objection to
7 form. Vague.

8 THE WITNESS: Yes.

9 (Whereupon, a discussion was
10 held off the record.)

11 THE VIDEOGRAPHER: 1:14, we
12 are off the video record.

13 (Brief pause.)

14 THE VIDEOGRAPHER: 1:17. We
15 are on the video record.

16 BY MR. FARRELL:

17 Q. Again, the last reference
18 that I'm going to bring up with regard to
19 Mr. Patterson's testimony before Congress
20 on behalf of the DEA, is a segment that
21 again talks about the shortcomings in the
22 use of the ARCOS data historically.

23 MR. FARRELL: Would you
24 please play that clip.

1 (Video clip played as
2 follows:)

3 MR. PATTERSON: So the key
4 is for us to work together on
5 that, and again, I can say
6 repeatedly in 2008, '9, '10, we
7 did not use this data in the way
8 that we are now using it. And I
9 think that's the key.

10 I get that we have this
11 issue from a decade ago that we
12 have to resolve, you know, in
13 terms of how we use it. And
14 again, where we fell short in
15 that, we'll take responsibility
16 for it.

17 (Video playback ended.)

18 BY MR. FARRELL:

19 Q. So has the DEA, in fact,
20 changed the way in which they are using
21 the ARCOS data?

22 A. Yes.

23 Q. And to be clear, to be
24 clear, what we are talking about is the

1 DEA's use of the ARCOS data to
2 retrospectively identify and prosecute
3 criminals?

4 MR. EPPICH: Object to form.

5 THE WITNESS: Yes.

6 BY MR. FARRELL:

7 Q. I apologize that I'm going
8 to jump out of order. There is a system
9 to my madness.

10 What I'm going to do is, is
11 I'm going to hit one particular subject
12 here, and then I'm going to go back
13 and -- and ask some questions as if, you
14 know, a priority from the beginning.

15 A. Okay.

16 Q. So my question is this. I
17 want to -- I want to ask you if the DEA
18 agrees with the following statement from
19 Cardinal Health:

20 "Cardinal Health's policy
21 about which it informed DEA as early as
22 2009, was that if a customer's order
23 could not be filled because it was
24 suspicious, Cardinal Health would

1 terminate controlled substance sales to
2 the customer and report the termination
3 to the DEA."

4 Do you understand what I
5 just read to you?

6 MS. MAINIGI: Objection.

7 Form. Objection. Scope.

8 THE WITNESS: Can I get the
9 first -- the first part of the
10 question?

11 BY MR. FARRELL:

12 Q. Yes. So specifically what
13 I'm referencing is Cardinal Health's
14 reply brief, in Cardinal Health versus
15 Eric Holder, which was a preliminary
16 injunction filed by Cardinal Health in a
17 DC District Court. And in it -- in the
18 reply brief there's a provision in here
19 that I read to you. And in essence what
20 it says is that if you get a suspicious
21 order, and you block it, that Cardinal
22 Health would terminate that customer and
23 not sell to it anymore.

24 Do you agree that if a

1 wholesale distributor gets a flag of a
2 suspicious order, that they've determined
3 to be a suspicious order, and that they
4 block that shipment, that they should
5 terminate all future sales to that same
6 customer until they can rule out that
7 diversion is occurring?

8 MS. MAINIGI: Objection.

9 Form. Objection. Scope. Calls
10 for a hypothetical.

11 MR. EPPICH: Objection to
12 the foundation. Calls for
13 speculation.

14 THE WITNESS: Yes, I would
15 agree.

16 BY MR. FARRELL:

17 Q. The same thing applies to a
18 document involving McKesson.

19 On August 13, 2014, the
20 United States Department of Justice was
21 communicating with the lawyer for
22 McKesson which ended up resulting in a
23 \$150 million fine.

24 And in this discussion, the

1 DEA notes, and I'm reading from Bates
2 Stamp MCKMDL 00409224, that the McKesson
3 operations manual says the following
4 quote:

5 "Once McKesson deems an
6 order and/or a customer suspicious,
7 McKesson is required to act. This means
8 all controlled substance sales to that
9 customer must cease and the DEA must be
10 notified."

11 Does the DEA agree with
12 those duties?

13 A. Yes.

14 MR. EPPICH: Objection.
15 Scope. Objection to the extent it
16 mischaracterizes the document.
17 Lacks foundation. Calls for
18 speculation. Form.

19 MR. FINKELSTEIN: The
20 witness has answered the question.

21 I just note that there are
22 no documents in front of him.
23 There are no exhibits. If you're
24 going to ask him about exhibits,

1 then you should mark them as
2 exhibits.

3 MR. FARRELL: I can
4 absolutely do that. And -- and I
5 think that I was trying to save us
6 some time. To the extent that
7 I've misread anything or the
8 context of it, I apologize.

9 We have those documents and
10 I can circulate them. I'm just
11 trying to create a quick record
12 before we move on.

13 MR. FINKELSTEIN: It's your
14 deposition.

15 MR. EPPICH: We'll have an
16 ongoing objection then, to the
17 extent you're reading from a
18 document that's not in front of us
19 to check, and -- and where you
20 haven't established a foundation,
21 then we will obviously object.

22 MR. FARRELL: So if it's --
23 if it's not clear, I'm trying to
24 create a record for our experts as

1 well.

2 MR. EPPICH: I got that,
3 thank you.

4 BY MR. FARRELL:

5 Q. So, cleaning up a couple of
6 other things.

7 There was some testimony
8 yesterday, or today actually, from my
9 learned colleague, that 1.2 million
10 suspicious orders were reported to the
11 DEA between 2007 and 2018.

12 Do you recall that
13 testimony?

14 A. Yes.

15 MR. EPPICH: Object to form.

16 BY MR. FARRELL:

17 Q. If those suspicious orders
18 were filled, is that a, per se, violation
19 of federal law?

20 MR. EPPICH: Objection to
21 form.

22 THE WITNESS: Yes.

23 MS. MAINIGI: Objection.

24 Calls for speculation, calls for a

1 legal conclusion.

2 THE WITNESS: Yes.

3 BY MR. FARRELL:

4 Q. The foundation of our
5 democracy arises out of the U.S. code.
6 So I'm going to ask a couple of general
7 questions about some code provisions that
8 I'm sure you're very familiar with.

9 MS. MAINIGI: Objection.

10 Outside the scope.

11 BY MR. FARRELL:

12 Q. The first one is the statute
13 of United States Code Section 801. And I
14 ask for it to be shown on the screen.

15 So you've been asked in the
16 past, with the focus on Subparagraph 1,
17 that many of the controlled substances
18 that are distributed in America,
19 prescribed and dispensed, have a useful
20 and legitimate medical purpose and that
21 they are necessary to maintain the health
22 and general welfare of the American
23 people.

24 That's a true statement, is

1 it not?

2 MS. MAINIGI: Objection.

3 Form.

4 MR. FINKELSTEIN: Same scope
5 objection. I allowed the
6 defendants to ask so I'll allow
7 you to ask.

8 BY MR. FARRELL:

9 Q. So we're going to skip down
10 to the part they omitted, which is
11 Subparagraph 2, and I'd ask for you to
12 read that into the record.

13 MR. EPPICH: Object to form.

14 THE WITNESS: "The illegal
15 importation, manufacture,
16 distribution and possession and
17 improper use of controlled
18 substances have a substantial and
19 detrimental effect on the health
20 and general welfare of the
21 American people."

22 BY MR. FARRELL:

23 Q. Is this consistent with the
24 guidance provided by the DEA to

1 registrants?

2 MR. EPPICH: Object to form.

3 Vague.

4 THE WITNESS: Yes.

5 BY MR. FARRELL:

6 Q. The next provision is
7 Section 812. And this is the scheduling
8 of -- by the United States Congress,
9 which identifies Schedule II drugs, which
10 include prescription opioids.

11 And Subparagraph A, would
12 you please read into the record?

13 A. "The drug or other substance
14 has" -- "has a high potential for abuse."

15 Q. Subparagraph B?

16 A. "The drug or other substance
17 has a currently accepted medical use and
18 treatment in the United States or a
19 currently accepted medical use with
20 severe restrictions."

21 Q. And Paragraph C?

22 A. "Abuse of the drug or other
23 substances may lead to severe
24 psychological or physical dependence."

1 Q. And are these provisions
2 consistent with the guidance provided by
3 the DEA to registrants?

4 MR. EPPICH: Objection to
5 form. Vague.

6 THE WITNESS: Yes.

7 BY MR. FARRELL:

8 Q. Go to the next section which
9 is Section 821. This is the enabling
10 statute from the United States Congress
11 that authorizes the Attorney General to
12 promulgate regulations regarding
13 prescription opioids.

14 Has, in fact, the DEA used
15 this authority to enact, in particular,
16 21 C.F.R. 1301.74?

17 MR. FINKELSTEIN: Calls for
18 a legal conclusion. You can
19 answer.

20 THE WITNESS: Yes.

21 BY MR. FARRELL:

22 Q. Go to the next slide. And
23 this is the United States Code Section,
24 which has a registration requirement.

1 And it includes a duty imposed upon the
2 registrants to comply with Paragraph 1.
3 Will you please read that into the
4 record?

5 A. "Maintenance of effective
6 control against diversion of particular
7 controlled substances into other than
8 legitimate medical, scientific, and
9 industrial channels."

10 Q. And is this consistent with
11 the guidance provided by the DEA to
12 registrants?

13 MR. EPPICH: Objection to
14 form. Vague.

15 THE WITNESS: Yes. Yes.

16 BY MR. FARRELL:

17 Q. Now, the next thing that I'm
18 going to do is to peer a little bit
19 deeper into some congressional intent
20 from the congressional record.

21 MR. FARRELL: Can you pull
22 up the next slide.

23 BY MR. FARRELL:

24 Q. I'm not going to ask you to

1 be a legal scholar or an academic
2 scholar. I'm going to ask you some
3 specific questions.

4 This comes from the
5 congressional record from the 1970
6 Controlled Substances Act.

7 MR. FARRELL: And so if
8 you'll go to the next slide.

9 BY MR. FARRELL:

10 Q. Title II, Control
11 Enforcement, states, "This bill provides
12 for control by the Justice Department of
13 problems related to drug abuse through
14 registration of manufacturers,
15 wholesalers, retailers, and all others in
16 the legitimate distribution chain, and
17 makes transactions outside the legitimate
18 distribution chain illegal."

19 Is this consistent with the
20 guidance the DEA provided to registrants?

21 MS. MAINIGI: Objection.

22 MR. EPPICH: Objection to
23 form.

24 THE WITNESS: Yes.

1 BY MR. FARRELL:

2 Q. If you violate Section 823,
3 or the provisions, the regulations
4 enacted by the DEA related to the
5 distribution of controlled substances,
6 those acts are illegal. Agreed or
7 disagree?

8 MS. MAINIGI: Objection.
9 Calls for a legal conclusion.

10 THE WITNESS: Agreed.

11 BY MR. FARRELL:

12 Q. The DEA considers violation
13 of federal law related to the
14 distribution of controlled substances as
15 illegal and unlawful?

16 MR. EPPICH: Objection to
17 form.

18 THE WITNESS: Yes.

19 MR. FARRELL: Go to the next
20 slide.

21 BY MR. FARRELL:

22 Q. The quote from the
23 congressional record is, "The bill is
24 designed to improve the administration

1 and regulation by the manufacturer" --
2 "by the manufacturing, distribution and
3 dispensing of controlled substances by
4 providing a quote-unquote closed system
5 of drug distribution for legitimate
6 handlers of such drugs.

7 "Such a closed system should
8 significantly reduce the widespread
9 diversion of these drugs out of
10 legitimate channels into the illicit
11 market, while at the same time providing
12 the legitimate drug industry with a
13 unified approach to narcotic and
14 dangerous drug control."

15 Is this consistent with the
16 guidance provided by the DEA to
17 registrants?

18 MR. EPPICH: Object to form.
19 Vague.

20 THE WITNESS: Yes.

21 BY MR. FARRELL:

22 Q. You were asked previously
23 whether every suspicious order results in
24 diversion. Do you recall that testimony?

1 A. Yes.

2 MR. EPPICH: Object to form.

3 BY MR. FARRELL:

4 Q. And your answer was, "No,
5 not every suspicious order results in
6 diversion. That's my recollection."

7 I would like to ask you some
8 corollary to that if you don't mind.

9 MS. MAINIGI: Objection.

10 THE WITNESS: Okay.

11 BY MR. FARRELL:

12 Q. You would agree with me --
13 strike that.

14 Does the DEA take the
15 position that the purpose of the
16 Controlled Substances Act and its federal
17 regulations is to prevent diversion?

18 A. Yes.

19 Q. And diversion is foreseeable
20 if registrants fail to comply with
21 federal law?

22 MS. MAINIGI: Object.

23 MR. EPPICH: Object to form.

24 MR. FINKELSTEIN: Vague.

1 MR. O'CONNOR: Object.

2 BY MR. FARRELL:

3 Q. Does the DEA agree that
4 diversion is foreseeable if registrants
5 fail to comply with federal law?

6 MS. MAINIGI: Objection.

7 MR. EPPICH: Objection.

8 Form. Calls for a legal
9 conclusion. Vague.

10 THE WITNESS: Correct.

11 BY MR. FARRELL:

12 Q. And failure to comply
13 enables more diversion. Does the DEA
14 agree with that?

15 MR. O'CONNOR: Object to
16 form.

17 MR. EPPICH: Objection.

18 MR. STEPHENS: Objection.

19 MR. NICHOLAS: Objection.

20 MS. MAINIGI: Objection.

21 MR. EPPICH: Calls for a
22 legal conclusion.

23 MR. FINKELSTEIN: Join as to
24 vagueness.

1 THE WITNESS: Yes.

2 BY MR. FARRELL:

3 Q. Does the DEA believe that
4 more diversion is detrimental to public
5 health and safety?

6 MR. O'CONNOR: Object to
7 form. Scope.

8 THE WITNESS: Yes.

9 BY MR. FARRELL:

10 Q. Does the DEA agree that the
11 more pills which unlawfully enter the
12 market results in more diversion?

13 MR. O'CONNOR: Objection to
14 form. Scope.

15 THE WITNESS: Yes.

16 MR. FARRELL: Go to the next
17 slide.

18 BY MR. FARRELL:

19 Q. This is a provision about
20 penalties. Does the DEA agree that the
21 price for participation in illegal
22 traffic of controlled substances should
23 be prohibitive?

24 MR. O'CONNOR: Objection.

1 MR. EPPICH: Objection to
2 form, foundation.

3 MR. STEPHENS: Objection.

4 MR. NICHOLAS: Objection.

5 MS. MAINIGI: Objection.

6 MR. O'CONNOR: Scope.

7 MR. EPPICH: Calls for
8 speculation.

9 MR. FINKELSTEIN: Scope.
10 You can answer.

11 THE WITNESS: Yes.

12 BY MR. FARRELL:

13 Q. Is this one of the reasons
14 that the DEA has escalated the amount of
15 fines that it has levied against
16 registrants that are repeated violators?

17 MR. O'CONNOR: Objection.
18 Leading.

19 MR. EPPICH: Objection to
20 form. Calls for speculation.

21 MR. FINKELSTEIN: Scope.

22 THE WITNESS: Yes.

23 BY MR. FARRELL:

24 Q. Next slide. Titles II and

1 III of the bill deal with law enforcement
2 and aspects of drug abuse and provide
3 authority for the Department of Justice
4 to keep track of all drugs subject to
5 abuse manufactured or distributed in the
6 United States in order to prevent
7 diversion of these drugs from legitimate
8 channels of commerce.

9 Is this consistent with the
10 guidance provided by DEA to registrants?

11 MR. EPPICH: Objection to
12 form. Vague.

13 MR. O'CONNOR: Objection.
14 Scope.

15 THE WITNESS: Yes.

16 MR. FARRELL: Next slide,
17 please.

18 Next slide.

19 BY MR. FARRELL:

20 Q. Congress found the illegal
21 importation, manufacture, distribution
22 and possession of improper use of
23 controlled substances have a substantial
24 detrimental effect on the public's health

1 and general welfare.

2 Does the DEA agree with this
3 statement, and is this consistent with
4 the guidance provided by the DEA to
5 registrants?

6 MR. O'CONNOR: Objection to
7 form and to scope.

8 MR. EPPICH: Objection to
9 the extent it misstates the
10 document.

11 BY MR. FARRELL: Very well.
12 That's a good point. I'll back
13 up.

14 BY MR. FARRELL:

15 Q. In the congressional record
16 is the following statement:

17 "The illegal importation,
18 manufacture, distribution and possession
19 and improper use of controlled substances
20 have a substantial detrimental effect on
21 the public's health and general welfare."

22 Does the DEA agree with this
23 statement?

24 MR. O'CONNOR: Objection to

1 form and scope.

2 MR. EPPICH: Objection.

3 Calls for speculation.

4 MR. FINKELSTEIN: Scope.

5 THE WITNESS: Yes.

6 BY MR. FARRELL:

7 Q. Is this statement consistent
8 with the guidance provided by the DEA to
9 registrants?

10 MR. O'CONNOR: Objection to
11 form and scope.

12 MR. EPPICH: Objection.

13 Vague.

14 THE WITNESS: Yes.

15 MR. FARRELL: Next slide
16 please.

17 There's no more?

18 BY MR. FARRELL:

19 Q. All right. Now we're going
20 to dig a little bit deeper. These aren't
21 the congressional record. This comes
22 from the hearing involving the 1970
23 Controlled Substances Act.

24 So, if you go to the front

1 page, this is a 900-page document that --
2 from the -- I always mispronounce this.
3 The HathiTrust? HathiTrust?

4 And it contains all of the
5 hearings that are -- that surrounded the
6 enactment of the 1970 Controlled
7 Substances Act. And there's some
8 particular statements that are made. I'm
9 not going to ask you to verify them. I'm
10 going to just ask whether the DEA agrees
11 or disagrees with the premise.

12 The first one comes from a
13 statement of the manager of -- of
14 distribution from a firm called Smith,
15 Kline & French Laboratories.

16 If you --

17 MR. NICHOLAS: I'll
18 object -- I'm sorry. I don't want
19 to interrupt. If you're not done,
20 keep going.

21 MR. FARRELL: So if you'll
22 go ahead and pull it up.

23 MR. NICHOLAS: Okay. Can I
24 just interpose an objection?

1 MR. FARRELL: Sure.

2 MR. NICHOLAS: I don't want
3 to mess with your flow here, but
4 you're showing these documents
5 that are not -- they are not --
6 they are not being offered as
7 evidence. They are not being
8 marked.

9 It's a direct examination.
10 I kind of feel like there needs to
11 be a little more formality to the
12 presentation. Like, you know,
13 these have to be exhibits or
14 something, right?

15 MR. FARRELL: Noted.

16 MR. NICHOLAS: So that's my
17 objection. I don't think you
18 should be able to proceed in this
19 manner without sort of producing
20 these things as exhibits or laying
21 a foundation for these documents.

22 MR. FARRELL: I will note we
23 spent most of the morning doing
24 the exact same thing with other

1 aspects of the congressional
2 record.

3 MR. NICHOLAS: This is a
4 direct examination.

5 MR. FARRELL: Understood.
6 So -- can we stipulate to that?

7 MR. NICHOLAS: I mean, it's
8 your position that it's a direct,
9 right?

10 BY MR. FARRELL:

11 Q. All right. So if we go to
12 Page 269, I'm going to read to you this
13 statement:

14 "We cannot overemphasize,
15 however, that no regulatory program will
16 work unless it is backed by sufficient
17 manpower and resources to do what it is
18 designed to do. The federal and state
19 enforcement agencies in the drug field
20 are all too well aware of this truism.
21 They are often the target for unjustified
22 public criticism for not doing a job that
23 would take many times their present
24 resources to do."

1 The D --

2 MS. MAINIGI: Go ahead.

3 BY MR. FARRELL:

4 Q. Does the DEA agree with this
5 statement?

6 MS. MAINIGI: Objection to
7 form, scope.

8 And can we see a copy of
9 this, Counsel? Because we have no
10 way to know what exactly you are
11 reading from within this document.

12 MR. FULLER: Here you go.

13 MS. MAINIGI: What page?

14 MR. FARRELL: 269.

15 Go to the next slide,
16 please.

17 MR. EPPICH: I'll object to
18 foundation.

19 BY MR. FARRELL:

20 Q. Go to the next slide,
21 please.

22 This is a statement from the
23 Washington representative for the
24 National Association of Retail Druggists.

1 "MR. ROGERS. As we ask
2 groups as they come in where they feel
3 diversion comes from or illegal traffic,
4 when you get to the manufacturers, they
5 don't feel that" -- "that any comes from
6 there.

7 "Then we get to the
8 wholesaler, and they don't think there is
9 any there. And then we get down to the
10 doctors and they tell us it is not in
11 that segment, and the retail druggist now
12 tells us there is none there. Well,
13 where do you feel all of this comes from?
14 We have 900 agents supposedly to track
15 all of this down and they come up with
16 4,000 arrests, five per man for the year.
17 I don't know how society gets inundated
18 with all of these drugs from no sources.
19 Where do you think it mainly comes from?
20 I don't believe there are enough
21 robberies out of warehouses to supply all
22 of this."

23 And then from the National
24 Association of Retail Druggists, their

1 response is:

2 "I don't believe there are
3 either. I think this is a factor and I
4 can certainly appreciate your concern. I
5 think, Mr. Chairman, that you put your
6 finger on the real problem that has to be
7 dealt with."

8 So my question to the DEA:
9 Is this consistent with the DEA's
10 understanding of the purpose and effect
11 of the Controlled Substances Act, as well
12 as the regulations enabled thereunder, is
13 to prevent diversion that happens in the
14 entire chain of distribution?

15 MR. EPPICH: Object to form.

16 MR. O'CONNOR: And scope.

17 MS. MAINIGI: Objection.

18 Outside the scope as well.

19 MR. NICHOLAS: Can we -- can
20 we know the date of this
21 statement, when it was made?

22 MS. MAINIGI: It is in 1970
23 prior to opioids that are at issue
24 here.

1 MR. NICHOLAS: Is that
2 correct, it's a pre-1970
3 statement?

4 MR. FINKELSTEIN: Are you
5 guys done with objections?

6 MS. MAINIGI: Well, it says
7 1970.

8 Paul, could you clarify
9 though. Is it 1970?

10 MR. FARRELL: I've already
11 made the record that I'm going to
12 make.

13 MR. FINKELSTEIN: Once you
14 are done -- are you guys done?

15 MR. NICHOLAS: Yeah.

16 MR. FINKELSTEIN: I object
17 to the scope. Vague.

18 You can answer if you
19 understand.

20 THE WITNESS: Yes.

21 BY MR. FARRELL:

22 Q. Even if it's not admissible,
23 you agree with me that's pretty
24 consistent with what the DEA hears today

1 from those in the chain of distribution.

2 MR. EPPICH: Object to form.

3 MR. O'CONNOR: And scope.

4 THE WITNESS: Could you
5 repeat the question?

6 BY MR. FARRELL:

7 Q. Even if this is from 1970,
8 are those sentiments that we just read
9 consistent with what the DEA presently
10 hears from the manufacturers,
11 distributors, doctors, and pharmacies in
12 the chain of distribution?

13 MR. STEPHENS: Object to
14 form.

15 MR. FINKELSTEIN: Vague.

16 MR. O'CONNOR: Object to
17 scope.

18 THE WITNESS: Yes.

19 BY MR. FARRELL:

20 Q. All right. The next thing
21 we're going to go to is the C.F.R. that
22 Congress enabled to be adopted. And the
23 first thing is going to be from March 13,
24 1971 and it's the rule proposal. And

1 we're going to flip down to Page 9.

2 Does the DEA recognize the
3 structure of this provision?

4 A. Yes.

5 MS. MAINIGI: Objection.
6 Foundation. Scope. Form.

7 MR. FARRELL: Well, the
8 foundation of this exhibit is this
9 is part of the rulemaking process
10 which resulted in the adoption of
11 21 C.F.R. 1301.74.

12 MS. MAINIGI: I don't think
13 you can testify, Mr. Farrell. You
14 have to establish foundation in
15 other ways.

16 BY MR. FARRELL:

17 Q. The next slide I'm going to
18 show you comes from once public notice
19 was made for this provision.

20 MR. FARRELL: Will you
21 please show that.

22 BY MR. FARRELL:

23 Q. It comes from April 24,
24 1971. At the very top of it, I'll have

1 you read that.

2 A. "Many manufacturers and
3 distributors objected to security
4 controls set forth in 301.91 to 301.97."

5 Q. And I'll represent to you
6 that these provisions they are
7 referencing are in fact the security
8 requirements in 1301.74(b). And I'll ask
9 the DEA: Do you still have records of
10 the objections lodged by manufacturers
11 and distributors to this regulatory
12 provision?

13 MR. EPPICH: Objection to
14 form.

15 MS. MAINIGI: Objection to
16 form, foundation, scope.

17 MR. EPPICH: Object to
18 scope. This is way outside of
19 Topic 1 of plaintiffs' topics.

20 MR. FINKELSTEIN: Scope.
21 You can answer.

22 BY MR. FARRELL:

23 Q. If you know.

24 A. I don't know.

1 Q. Is it something that DEA can
2 look into for me?

3 MR. EPPICH: Same
4 objections.

5 MS. MAINIGI: Objection.

6 THE WITNESS: Yes.

7 BY MR. FARRELL:

8 Q. Because it would be swell
9 if, like, some of the manufacturers and
10 distributors that are here objecting to
11 the DEA have been objecting since 1971.

12 MS. MAINIGI: Is that a
13 question?

14 MR. EPPICH: Objection to
15 the characterization.

16 MR. FARRELL: That was just
17 commentary.

18 MR. EPPICH: I know.

19 BY MR. FARRELL:

20 Q. The next slide is going to
21 be the actual regulation that exists
22 today, which is 21 C.F.R. 1301.74(b).

23 MR. FINKELSTEIN: That's not
24 it.

1 MR. STEPHENS: Paul, just
2 for clarification, are you marking
3 these so that we have a hard copy
4 that we can use in redirect?
5 You're just throwing stuff up on
6 the screen and playing stuff and
7 moving on.

8 MS. MAINIGI: And sometimes
9 not even waiting for an answer.

10 MR. FARRELL: Understood.

11 MR. STEPHENS: Do you
12 understand my point? If you're
13 using a document, I want to see
14 the whole document so if I've got
15 questions that I can use it in
16 redirect.

17 MR. FARRELL: We do have
18 copies. You've got copies of
19 stuff here too. Yeah, we got
20 copies.

21 MS. MAINIGI: I thought you
22 were sending these all
23 electronically.

24 MR. FARRELL: I think you

1 scoffed at me when I made that
2 recommendation.

3 MS. MAINIGI: I did laugh at
4 you. That's true. But I thought
5 you were still doing it.

6 MR. FARRELL: We'll move on.

7 BY MR. FARRELL:

8 Q. I've shown you up on the
9 screen, which is a verbatim copy of --
10 from the regulations enacted.

11 Does the DEA recognize and
12 acknowledge that 21 C.F.R. 1301.74 is a
13 regulation enacted and under its
14 authority?

15 MS. MAINIGI: Objection.

16 MR. EPPICH: Objection.

17 MR. FINKELSTEIN: Calls for
18 a legal conclusion.

19 THE WITNESS: Yes.

20 BY MR. FARRELL:

21 Q. And would you please read
22 subparagraph (b) into the record?

23 A. "The registrant shall design
24 and operate a system to disclose to the

1 registrant suspicious orders of
2 controlled substances. The registrant
3 shall inform the field division office of
4 the administration in his area of
5 suspicious orders when discovered by the
6 registrant.

7 "Suspicious orders include
8 orders of unusual size, orders deviating
9 substantially from a normal pattern, and
10 orders of unusual frequency."

11 Q. Is this consistent with the
12 guidance provided by the DEA to
13 registrants?

14 A. Yes.

15 Q. And has this regulation
16 materially changed since it was
17 originally enacted in 1971?

18 A. No.

19 Q. All right. The next
20 document that I'm going to show you comes
21 from discovery in this case. And it's
22 the NWDA suspicious order monitoring
23 system.

24 And I believe that the

1 government has it included in its folder,
2 its materials file.

3 Have you seen this document
4 before?

5 A. Can I see more than that?

6 Q. I think it's under -- it's
7 in one --

8 A. In my tabs, my folder?

9 Q. Yeah.

10 A. Yes.

11 Q. I'll give you a second if
12 you want to flip through it.

13 A. That's all I see.

14 I'm familiar with this.

15 Q. This is a document that was
16 in the files of Cardinal Health. And
17 it's stamped as received in 1993, but
18 I'll represent to you that it contains
19 some older 1984 references later on.

20 I'm going just to ask you a
21 few basic questions about it. And I'll
22 represent to you that the NWDA is a trade
23 group for the wholesale distributors at
24 some point in time.

1 Go to Page 3.

2 MR. FARRELL: Take that down
3 first if you don't mind. I'm
4 sorry. I was talking to John.
5 Take out the blowup.

6 Go ahead. Put it back up.

7 BY MR. FARRELL:

8 Q. So this is something very
9 specific that I want to ask the DEA.

10 MS. MAINIGI: Objection.

11 Let me object first to the manner
12 in which you're questioning. You
13 cannot be testifying about various
14 aspects of this document.

15 But objection. Form.
16 Foundation. This guy hasn't --
17 this is not a DEA document.
18 You're essentially trying to use
19 him as a vehicle to get testimony
20 from the document itself. It's
21 ridiculous and objectionable and
22 outside the scope.

23 MR. FARRELL: You can make
24 your objections without making

1 demeaning comments. So I'm going
2 to ask you --

3 MS. MAINIGI: Okay. Well,
4 it is a mockery of the process.

5 MR. FARRELL: That's your
6 second demeaning comment. The
7 third one, we'll get the special
8 master on the phone.

9 MS. MAINIGI: That's fine.
10 I actually would love that. Go
11 ahead.

12 MR. FARRELL: We can do it
13 on a break after we get through
14 this document.

15 MS. MAINIGI: Sounds fine to
16 me.

17 BY MR. FARRELL:

18 Q. So what I'm going to ask you
19 is, if you look in the middle of the page
20 where it says, "Current month ingredient
21 limit," and then there's a note that says
22 "NN.NN will be provided by the DEA."

23 Do you see that?

24 MS. MAINIGI: Objection.

1 Form. Scope. Foundation.

2 THE WITNESS: Yes.

3 BY MR. FARRELL:

4 Q. Okay. Cardinal Health has
5 represented that the DEA provided that
6 factor to them for controlled substances.
7 Is the DEA aware of ever providing the
8 factor for the current month ingredient
9 limit to anybody in industry?

10 MS. MAINIGI: Objection.

11 Form. Scope. Foundation.

12 THE WITNESS: I don't know.

13 BY MR. FARRELL:

14 Q. Go all the way to Page 7.
15 In the middle of the page in Paragraph 9,
16 "Single suspicious orders." For purposes
17 of context I'd like you to read this
18 aloud.

19 MS. MAINIGI: Objection to
20 form, scope, foundation.

21 THE WITNESS: "Single orders
22 of unusual size or deviation must
23 be reported immediately. The
24 submission of a monthly printout

1 of after-the-fact sales will not
2 relieve a registrant from the
3 responsibility of reporting these
4 single excessive or suspicious
5 orders.

6 "DEA has interpreted orders
7 to mean prior to shipment."

8 BY MR. FARRELL:

9 Q. Is this statement consistent
10 with the guidance provided by the DEA to
11 registrants?

12 A. Yes.

13 MR. O'CONNOR: Objection.

14 MR. EPPICH: Objection.

15 MR. STEPHENS: Objection.

16 MR. NICHOLAS: Objection.

17 MS. MAINIGI: Objection.

18 Form.

19 MR. EPPICH: Foundation,
20 form, calls for speculation.

21 BY MR. FARRELL:

22 Q. I'm not asking you to
23 speculate. As a matter of fact, is this
24 consistent with what the DEA has told its

1 registrants is required to comply with
2 federal law?

3 MS. MAINIGI: Objection.

4 MR. EPPICH: Objection.

5 Form. Foundation. Calls for
6 speculation. Vague as to time.

7 MR. FINKELSTEIN: I'll join
8 the objection as to the vagueness
9 as to time.

10 THE WITNESS: Yes.

11 BY MR. FARRELL:

12 Q. Is the DEA aware of ever in
13 its history of saying anything
14 inconsistent with what you just read?

15 MR. EPPICH: Objection.

16 Form, foundation, calls for
17 speculation, outside the scope.

18 THE WITNESS: I have --
19 could you -- could you re-read it?

20 BY MR. FARRELL:

21 Q. I'll strike it. I got the
22 answer. I'll strike it.

23 The next thing I'm going to
24 do is I'm going to show you from Page 8,

1 attached to this in the Cardinal Health
2 files, is a cover sheet that says letters
3 from DEA approving the format.

4 And if you look, the first
5 letter is dated April 27, 1984.

6 Are you familiar with this
7 correspondence?

8 MS. MAINIGI: Objection.
9 Outside the scope. It's 1984.
10 Form and foundation.

11 MR. FARRELL: Well, the
12 irony of it is, is that Cardinal
13 Health specifically referenced
14 this document in its combined
15 discovery responses.

16 So I'm going to ask you --

17 MS. MAINIGI: Outside the
18 scope of this deposition.

19 MR. FARRELL: I'm going to
20 ask the witness again --

21 BY MR. FARRELL:

22 Q. Are you familiar with this
23 document?

24 A. No.

1 Q. When you look at the
2 reliance materials that you have in front
3 of you, you can flip through it and find
4 if it's not in the back.

5 MS. MAINIGI: Objection.
6 Form, foundation.

7 THE WITNESS: No.

8 BY MR. FARRELL:

9 Q. Okay. So what I'm going to
10 ask you is, is to flip to Page 2 and see
11 Mr. Thomas Gitchell, acting chief
12 diversion of operations section. Are you
13 familiar with Mr. Gitchell?

14 A. Yes, I know who he -- I know
15 who he is.

16 Q. Is Mr. Gitchell authorized
17 to speak on behalf of the DEA at this
18 time?

19 MS. MAINIGI: Objection.
20 Outside the scope. Form.
21 Foundation.

22 MR. FINKELSTEIN: Objection.
23 Vague.

24 MR. EPPICH: Objection.

1 Calls for speculation.

2 MR. FARRELL: It can't be
3 speculation. It's the DEA
4 testifying on whether or not the
5 chief of the diversion operation
6 section has the authority to make
7 statements on behalf of the DEA.

8 MR. EPPICH: In 1983?

9 MR. FARRELL: Correct.
10 Which is reliance by Cardinal
11 Health and others as to its
12 suspicious order monitoring
13 system.

14 MR. EPPICH: Outside the
15 scope of the authorization.

16 MR. FARRELL: It's -- this
17 is going to be related to the
18 guidance provided by the DEA.

19 MR. EPPICH: Well, we'll let
20 him answer.

21 BY MR. FARRELL:

22 Q. So, go back to the prior --
23 prior page. All right.

24 So taking off --

1 MR. FARRELL: If you'll take
2 off the blow-off first.

3 BY MR. FARRELL:

4 Q. The date is April 27, 1984.
5 You'll see in the bottom right-hand
6 corner this is a document that is in the
7 Cardinal Health files.

8 MS. MAINIGI: Objection.
9 Form, scope, foundation.

10 BY MR. FARRELL:

11 Q. And so I'm going to ask that
12 the -- that the main paragraph be blown
13 up so we can read it.

14 So the NWDA policy that
15 was -- that we just walked through, is
16 what this reference is to.

17 And I'd ask for you to read
18 it, the portion that's highlighted.

19 A. "The NWDA's draft format for
20 a suspicious order" -- "order monitoring
21 system provides an excellent framework
22 for distributor registrants to design and
23 operate a system to disclose to the
24 registrant suspicious orders of

1 controlled substances."

2 Q. Very good.

3 Now I'd like you to read the
4 next sentence.

5 MS. MAINIGI: Objection.

6 Form, scope, foundation.

7 THE WITNESS: "However, I am
8 compelled to note, as I have in
9 our previous discussions, that any
10 automated data processing system
11 may provide the means and
12 mechanism for compliance when the
13 data is carefully reviewed and
14 monitored by the wholesaler."

15 BY MR. FARRELL:

16 Q. Is this statement consistent
17 with guidance provided by the DEA to
18 registrants?

19 MS. MAINIGI: Objection.

20 Outside the scope. Form,
21 foundation.

22 MR. EPPICH: Objection.

23 Vague.

24 MR. FINKELSTEIN: Vague as

1 to time.

2 THE WITNESS: Yes.

3 BY MR. FARRELL:

4 Q. Now, go to the final
5 sentence. Will you please read this
6 aloud?

7 A. "As previously discussed, an
8 after-the-fact computer printout of sales
9 data does not relieve a registrant of its
10 responsibility to report excessive or
11 suspicious orders when discovered. I am
12 enclosing a copy of your draft with my
13 pen and ink changes."

14 Q. Is this consistent with the
15 guidance provided by the DEA to
16 registrants?

17 MS. MAINIGI: Objection.

18 Form, scope, foundation.

19 THE WITNESS: Yes.

20 BY MR. FARRELL:

21 Q. Is after the fact reporting
22 of suspicious orders in full compliance
23 with federal law?

24 MS. MAINIGI: Objection.

1 Form, scope, foundation, and vague
2 as to time.

3 MR. EPPICH: Objection.
4 Calls for a legal conclusion.

5 THE WITNESS: Could you
6 repeat it?

7 BY MR. FARRELL:

8 Q. Has after the fact reporting
9 of suspicious orders ever been in
10 compliance with federal law according to
11 the DEA's guidance provided to
12 registrants?

13 A. No.

14 MS. MAINIGI: Objection.
15 Form, foundation.

16 MR. EPPICH: Objection.
17 Vague.

18 MR. FINKELSTEIN: For -- for
19 the witness and Paul, we'll go
20 another half hour and then take a
21 break.

22 MR. FARRELL: Yeah, actually
23 I've got one more page and then it
24 might be a good break point.

1 MR. FINKELSTEIN: Okay.

2 BY MR. FARRELL:

3 Q. So from the Cardinal Health
4 files comes a second letter from the DEA.
5 And it's dated approximately three weeks
6 later, May 16, 1984. And it's again from
7 the DEA.

8 This letter was specifically
9 referenced by Cardinal Health in its
10 discovery responses as a blessing of
11 after the fact reporting of suspicious
12 orders. I'll represent that to you.

13 So what I'd like you to do
14 is we're going to blow up the first
15 paragraph and we're going to walk through
16 it again.

17 Do you see there right in
18 the middle? Would you read the
19 highlighted provision?

20 MS. MAINIGI: Objection.

21 Form, foundation, scope.

22 THE WITNESS: "In order to
23 clarify any misinterpretations, I
24 want to assure you that the DEA

1 fully supports the NWDA effort to
2 introduce a uniform reporting
3 system among its members."

4 BY MR. FARRELL:

5 Q. And then the very next
6 sentence, please read it. This is the
7 one quoted by Cardinal Health.

8 A. This --

9 MS. MAINIGI: Objection.
10 Form, foundation, scope.

11 MR. EPPICH: Object to the
12 characterization.

13 BY MR. FARRELL:

14 Q. Go ahead.

15 A. "This system as proposed
16 will meet the reporting requirements of
17 21 C.F.R. 1301.74 (b) ."

18 Q. Now, what I'd like you to do
19 is read the next sentence which is
20 omitted from the discovery responses
21 filed by Cardinal Health.

22 MS. MAINIGI: Objection.

23 Form, foundation, and scope.

24 And DOJ, I'd like to ask a

1 question on the record. Yesterday
2 we were prohibited --

3 MR. FARRELL: Hold on. You
4 can do it after he finishes
5 answering the question.

6 MS. MAINIGI: Well, I know.
7 They can answer whenever they want
8 to, but --

9 MR. FARRELL: Counsel for
10 Cardinal, I'm going to ask you not
11 to make another speaking
12 objection.

13 MS. MAINIGI: It's --

14 MR. FARRELL: Your objection
15 is made, it's on the record. And
16 then you can create whatever
17 record you want as soon as the
18 witness is done.

19 So I'm going to ask the
20 witness to read the highlighted
21 section.

22 MS. MAINIGI: My question
23 is, yesterday --

24 MR. FARRELL: You are

1 becoming disruptive. You're
2 becoming disruptive.

3 MS. MAINIGI: Then --

4 MR. FARRELL: And you are
5 intervening. And -- and we will
6 get Special Master Cohen on.

7 MS. MAINIGI: That's fine.

8 I was prohibited from
9 asking, or somebody was prohibited
10 from asking the question --

11 MR. FARRELL: If
12 Judge Polster were sitting here
13 right now, he would sanction you.

14 MS. MAINIGI: Well, then I
15 guess lucky for me he is not. But
16 will you let me get my objection
17 out?

18 MR. FARRELL: No, this is my
19 direct testimony, and you're
20 making a speaking objection.

21 MS. MAINIGI: Just like you
22 made yesterday multiple times.

23 But this is a question to
24 the DEA. It's not a speaking

1 objection.

2 And the question is:

3 Yesterday, we were prohibited and
4 the witness was instructed to not
5 answer questions on communications
6 with trade organizations.

7 Is the DEA/DOJ going to
8 allow this question which is the
9 same type?

10 MR. FINKELSTEIN: I disagree
11 with your characterization of what
12 happened yesterday. You can ask
13 your questions and I will make my
14 objections, and counsel can ask
15 his questions and I will make my
16 objections.

17 BY MR. FARRELL:

18 Q. Would you please read the
19 highlighted section.

20 A. "However, I want to make it
21 clear that the submission of a monthly
22 printout of after-the-fact sales will not
23 relieve a registrant from the
24 responsibility of reporting excessive or

1 suspicious orders. DEA has interpreted
2 orders to mean prior to shipment."

3 Q. Is this statement consistent
4 with the guidance the DEA has always
5 provided to registrants?

6 MS. MAINIGI: Objection.

7 Form. Foundation. Scope.

8 THE WITNESS: Yes.

9 MR. FARRELL: This might be
10 a good break point if the DOJ
11 agrees.

12 MR. STEPHENS: Before we
13 break, Paul, just real quick, can
14 we please get a copy of the
15 presentation and the documents so
16 that we can review them
17 simultaneously while you're doing
18 this so we can handle our
19 redirect?

20 MR. FARRELL: Yes, yes.

21 MR. STEPHENS: Okay. If we
22 get them afterwards, then we're
23 going to need time to study them.

24 MR. FARRELL: Yeah, you're

1 going to have more than time.
2 You're going to have days before
3 we reconvene for your redirect.

4 MR. STEPHENS: You
5 understand what I'm saying.
6 You're handing me things. I'm
7 doing the same to you. I've never
8 been in a situation where the
9 witness is being examined and I
10 don't have the document in front
11 of me.

12 MR. FARRELL: I'm putting
13 the document up on the screen as a
14 demonstrative point and then
15 asking the DEA to comment on it.
16 There is nothing that I have shown
17 anybody that is not in the record
18 and that hasn't been used in prior
19 testimony.

20 In fact, it's specifically
21 referenced in y'all's discovery
22 responses.

23 MS. MAINIGI: The 1970
24 hearings?

1 MR. FARRELL: So at this
2 point in time -- at this point at
3 time, can we go off the record for
4 a break?

5 MR. FINKELSTEIN: Oh, I
6 thought we already were.

7 THE VIDEOGRAPHER: 2:04. We
8 are off the video record.

9 (Short break.)

10 MR. FARRELL: As one of the
11 co-leads for the plaintiffs' PEC
12 in the MDL litigation, I'll report
13 to you what David Cohen said.

14 Special Master Cohen
15 admonished us and reminded us of
16 his prior orders that we are to
17 eliminate speaking objections,
18 we're all to make sure that when
19 we state an objection, it's
20 concise.

21 He advised both plaintiffs
22 and defendants to make sure you
23 comply with it. He's not going to
24 tolerate speaking objections or

1 coaching of witnesses. We've
2 discussed this in other
3 depositions.

4 He also instructed that it's
5 not for us to be disputing or
6 debating the Touhy, that that's
7 for the government and for the
8 government to make the decisions.
9 And the discussion of
10 admissibility is for another day,
11 and that he expects us to conduct
12 ourselves like professionals and
13 move forward as best as we can.

14 And then on day three he's
15 volunteered to make himself
16 available.

17 Is there anything else that
18 anybody else would like to add?

19 MR. BENNETT: Yes, he also
20 made it very clear that there will
21 not be a fourth day.

22 MR. FARRELL: All right.
23 Now, what I would like to do is
24 I'm going to provide demonstrative

1 exhibits.

2 MR. FINKELSTEIN: One more
3 thing. We did take issue from the
4 fact that we've been excluded from
5 many of the parties' conversations
6 with the court concerning
7 government witnesses and
8 government rights. We asked the
9 court formally, as we have in the
10 past, as we have asked the parties
11 many times in the past, to be
12 included in conversations with the
13 court, and the court unambiguously
14 required the parties to do so.

15 MR. FARRELL: Very good.

16 So the first set of
17 demonstrative exhibits are four
18 slides that I'll have marked as
19 Plaintiffs' 1. And it is the four
20 sections of the United States
21 code, including 801, 812, and 823.
22 These are the same slides that
23 were used in the McKesson 30(b)(6)
24 deposition.

1 (Document marked for
2 identification as Exhibit
3 DEA-Prevoznik-P-1.)

4 MR. FINKELSTEIN: So just to
5 be clear, you're handing these out
6 to us so that we have them.

7 MR. FARRELL: I'm having
8 this marked as an exhibit and then
9 the government can have it.

10 The second demonstrative
11 exhibit, Plaintiffs' 2 is the
12 United States USCCAN, U-S-C-C-A-N,
13 and it was referenced from the
14 congressional history.

15 MR. FINKELSTEIN: Are you
16 going to mark it?

17 THE VIDEOGRAPHER: They want
18 video for this.

19 MR. FARRELL: Okay. We'll
20 start over.

21 THE VIDEOGRAPHER: 2:47. We
22 are on the video record.

23 MR. FARRELL: Can I have
24 that back, please.

1 Plaintiffs' Exhibit 1 is the
2 four slides that demonstrate the
3 United States Code 21 U.S.C. 801,
4 812, 821 and 823.

5 Plaintiffs' 2.

6 (Document marked for
7 identification as Exhibit
8 DEA-Prevoznik-P-2.)

9 MR. FARRELL: Is HR REP
10 Number 1444, 91st Congress.
11 Second session, 1970. This is the
12 congressional record from the
13 Controlled Substances Act. It's
14 the same document that was entered
15 in the McKesson 30(b)(6)
16 deposition.

17 (Document marked for
18 identification as Exhibit
19 DEA-Prevoznik-P-3.)

20 MR. FARRELL: Plaintiffs' 3
21 is from the HathiTrust, and it is
22 the drug abuse control amendments
23 from the 1970 hearings, 91st
24 Congress, second session. 900

1 pages of which we referenced only
2 a couple.

3 This is the first time that
4 was referenced in deposition as --
5 and in the MDL that I'm aware of.

6 (Document marked for
7 identification as Exhibit
8 DEA-Prevoznik-P-4.)

9 MR. FARRELL: Plaintiffs' 4
10 is -- we referenced Page 9 of the
11 Federal Register. Volume 36,
12 Number 80, from March 13, 1971.

13 MR. STEPHENS: This is
14 Number 4, Paul? Number 4?

15 MR. FINKELSTEIN: This is
16 Number 4.

17 MR. FARRELL: Number 5 was
18 the Federal Register from proposed
19 rulemaking from Saturday, March --
20 actually, that's -- this is
21 another copy. What was that
22 number? I'm sorry.

23 MR. FINKELSTEIN: That was
24 4.

1 MR. FARRELL: Did I make a
2 mistake? Sorry I got that
3 backwards.

4 Number 4 is from March 13,
5 1971. It's Volume 36, Number 50,
6 from the Federal Register.

7 Plaintiffs' Exhibit 5 is
8 from April 24, 1971, from the
9 Federal Register, Volume 36,
10 Number 80.

11 (Document marked for
12 identification as Exhibit
13 DEA-Prevoznik-P-5.)

14 MR. FARRELL: And we
15 referenced Paragraph 6 at the top
16 of the first page.

17 (Document marked for
18 identification as Exhibit
19 DEA-Prevoznik-P-6.)

20 MR. FARRELL: Plaintiffs' 6
21 is another slide that's been used
22 in the McKesson depositions of
23 Nate Hardle, 30(b)(6). And it's
24 simply a demonstrative exhibit of

1 21 C.F.R. 1301.74.

2 (Document marked for
3 identification as Exhibit
4 DEA-Prevoznik-P-7.)

5 MR. FARRELL: Plaintiffs' 7
6 is a document produced by Cardinal
7 Health in discovery and MDL2804.

8 It begins with Bates stamp
9 CAH_MDL2804_01465723, and it
10 extends all the way through
11 CAH_MDL2804_01465734.

12 It's Plaintiffs' Exhibit 7.
13 And I'll represent that it was
14 also in the government reliance
15 materials that they produced
16 yesterday at deposition.

17 That brings us up-to-date
18 for all of the demonstrative
19 exhibits that were used so far on
20 the record.

21 MR. STEPHENS: Thank you.

22 MR. FINKELSTEIN: So should
23 we go off the record and bring the
24 witness back?

1 MR. FARRELL: Yes.

2 MS. MAINIGI: Yes.

3 THE VIDEOGRAPHER: 2:51. We
4 are off the video record.

5 (Brief pause.)

6 THE VIDEOGRAPHER: 2:55. We
7 are on the video record.

8 MR. FARRELL: More
9 housecleaning. Earlier today we
10 referenced -- more housecleaning.

11 Earlier we referenced a
12 position taken by Cardinal Health
13 in a pleading. It's United States
14 District Court for the -- United
15 States District Court for the
16 District of Columbia, Cardinal
17 Health versus Eric Holder, Case
18 Number 1:12-cv-00185-RBW.

19 It is Document 16 in the
20 pleading index, filed on
21 February 13, 2012. It's
22 previously been circulated, I'll
23 show it to you, even though it's
24 not being admitted through this

1 witness.

2 For the record that's the
3 document that I referenced.

4 (Document marked for
5 identification as Exhibit
6 DEA-Prevoznik-P-8.)

7 MR. FARRELL: Same thing
8 with earlier today, I referenced
9 what's being marked now -- that
10 was Plaintiff 8. This is going to
11 be Plaintiff 9.

12 (Document marked for
13 identification as Exhibit
14 DEA-Prevoznik-P-9.)

15 MR. FARRELL: And this is a
16 single page from a document with a
17 Bates stamp MCK MDL 00409239. And
18 again, this is a document that was
19 produced by McKesson in discovery
20 that I referenced and asked
21 questions about it with this
22 witness.

23 MR. FINKELSTEIN: Are you
24 going to provide me with copies?

1 MR. FARRELL: Yes.

2 Did you get a copy of the
3 NWDA policy?

4 MR. FINKELSTEIN: Thanks.

5 MR. FARRELL: That's
6 previously been made.

7 MR. FINKELSTEIN: Just wait
8 for a question.

9 BY MR. FARRELL:

10 Q. Mr. Prevoznik, the next
11 document I'm going to reference is
12 actually in your notebook.

13 A. Okay.

14 Q. In the reliance materials
15 that you disclosed yesterday.

16 And it's the -- from the
17 1996 diversion investigators manual.
18 Section 5126.

19 MR. FARRELL: Bring it up on
20 the screen. And pass it down.

21 Here is some extra copies in
22 case people didn't bring their
23 notebooks back.

24 BY MR. FARRELL:

1 Q. On behalf of the DEA, do you
2 recognize this document?

3 A. Yes, I do.

4 Q. What is it?

5 A. It is part of our diversion
6 investigators manual.

7 Q. What does that mean?

8 What -- what is a diversion
9 investigators manual?

10 A. It's a manual that breaks
11 down our responsibilities, our job.
12 It -- it covers the whole gambit of what
13 registration is -- what a registrant is,
14 down to record reports, requirements. It
15 goes through our scheduled
16 investigations, pre-registration
17 investigations, how to -- conducting
18 audits when we do the scheduled
19 investigation, what topics, what areas to
20 cover.

21 It covers controlled
22 substances -- controlled substances. It
23 also covers the chemicals, List I
24 chemicals, the requirements of that, as

1 well as preregistration investigations of
2 chemicals, applicants.

3 It covers the -- the gambit
4 of exactly what our job is.

5 Q. Are these -- in this page
6 that we're showing here, the bottom
7 right-hand corner is a Bates stamp. Can
8 you read that Bates stamp?

9 A. 00025231.

10 Q. Okay. Is this a document
11 produced by the DEA in this litigation at
12 the request of counsel for the diversion
13 investigators manual from 1996?

14 MR. FINKELSTEIN: Scope.

15 We'll stipulate that we
16 produced it.

17 MR. FARRELL: Thank you.

18 BY MR. FARRELL:

19 Q. So the title of Section 5126
20 says what?

21 A. Requirement to report
22 suspicious orders.

23 Q. Would you read the first
24 sentence of the first paragraph aloud?

1 A. "Registrants are required to
2 inform DEA of suspicious orders in
3 accordance with 21 C.F.R. 1301.74(b) .
4 DEA field offices are not to approve or
5 disapprove supplier shipments of
6 controlled substances. The
7 responsibility for making the decision to
8 ship rests with the supplier. No (sic)
9 exception to this occurs when a supplier
10 complies with a DEA field office's
11 request to initiate a controlled delivery
12 of controlled substances."

13 Q. Is this consistent with the
14 guidance provided by the DEA to
15 registrants?

16 MS. MAINIGI: Objection.

17 THE WITNESS: Yes.

18 MR. FARRELL: Now, if you'll
19 go down to -- keep going.

20 BY MR. FARRELL:

21 Q. Beginning with
22 "registrants," could you begin reading,
23 please.

24 A. "Registrants who routinely

1 report suspicious orders, yet fill these
2 orders, with reason to believe they are
3 destined for the illicit market, are
4 expressing an attitude of
5 irresponsibility that is detriment to the
6 public health and safety as set forth in
7 21 U.S.C. 823 and 824."

8 Q. Thank you. Is this
9 consistent with the guidance provided by
10 the DEA to registrants?

11 MS. MAINIGI: Objection to
12 form.

13 MR. FINKELSTEIN: Objection.
14 Form.

15 THE WITNESS: Yes.

16 BY MR. FARRELL:

17 Q. So this is the official
18 policy of the DEA as of 1996, agreed?

19 A. Yes.

20 Q. Is this the position that
21 the DEA was instructing its diversion
22 investigators to take when looking into
23 cases involving the distribution of
24 controlled substances?

1 MS. MAINIGI: Objection to
2 form.

3 MR. FINKELSTEIN: Vague as
4 to time.

5 BY MR. FARRELL:

6 Q. In 1996.

7 A. Yes.

8 Q. Are you aware of any
9 deviation or change from that position by
10 the DEA since 1996?

11 MS. MAINIGI: Objection.

12 THE WITNESS: No.

13 BY MR. FARRELL:

14 Q. So the next sentence is just
15 a recitation of the suspicious order
16 definition. What I'd like you to do is
17 go down to where it starts, "The supplier
18 can determine," and begin reading aloud.

19 A. "The supplier can determine
20 whether the order is excessive by
21 checking their own sales and establishing
22 the average amount of controlled
23 substances shipped to registrants of the
24 same apparent size in a particular

1 geographic area."

2 Q. Read the next sentence,
3 please.

4 A. "If the customer exceeds
5 this threshold, the request should be
6 viewed as suspicious."

7 Q. Is this consistent with the
8 guidance that the DEA provided to
9 registrants since at least 1996?

10 MS. MAINIGI: Objection to
11 form.

12 THE WITNESS: Yes.

13 BY MR. FARRELL:

14 Q. Is this the position that
15 the DEA -- strike that.

16 The reading of this seems to
17 indicate that if you exceed an average
18 amount, if a customer exceeds an average
19 amount -- let me start over.

20 This directive that DEA had
21 internally seems to indicate that it
22 considered that an order in excess of a
23 customer's average amount should be
24 deemed suspicious. Is that a fair

1 depiction?

2 A. Could you please --

3 MS. MAINIGI: Objection to
4 form.

5 THE WITNESS: Could you
6 please repeat that.

7 BY MR. FARRELL:

8 Q. Yeah. When I read this, it
9 seems to indicate that a wholesale
10 distributor should watch the average
11 purchase by a customer over time, and if
12 that average is exceeded, it should be
13 deemed suspicious. Is that a fair
14 reading of this provision?

15 MR. FINKELSTEIN: Object to
16 the characterization.

17 MS. MAINIGI: Object to
18 form. Calls for a legal
19 conclusion.

20 THE WITNESS: Well, I think
21 it also includes that it has to
22 look at the other registrants in
23 that area. It's not just the
24 registrant that's ordering, but

1 it's also comparing against the
2 other registrants in that area.

3 BY MR. FARRELL:

4 Q. So if you take an average of
5 the registrants in the area and you
6 calculate that, if a customer exceeds
7 that average, is that a red flag for a
8 wholesale distributor that the order may
9 be suspicious?

10 MS. MAINIGI: Objection.
11 Calls for speculation. Objection
12 to form.

13 THE WITNESS: Yes.

14 BY MR. FARRELL:

15 Q. And is that consistent with
16 the directives the DEA has given to
17 registrants since at least 1996?

18 MS. MAINIGI: Objection to
19 form.

20 THE WITNESS: Yes.

21 BY MR. FARRELL:

22 Q. The next sentence, would you
23 read, please.

24 A. I forgot where I stopped.

1 Q. "This activity."

2 A. "This activity, over
3 extended periods of time, would lead a
4 reasonable person to believe that
5 controlled substances possibly are being
6 diverted.

7 Q. Now, so what I'm asking you
8 is, when you read this, is it fair to
9 assume that this is consistent with the
10 DEA's guidance to industry since at least
11 1996?

12 MR. FINKELSTEIN: Objection.
13 Vague.

14 MS. MAINIGI: Objection to
15 form.

16 THE WITNESS: Yes.

17 BY MR. FARRELL:

18 Q. Would you read the next
19 sentence, please.

20 A. "An investigation will be
21 conducted for possible violation of the
22 CSA and regulations upon determining that
23 the reporting registrant, as a general
24 practice, does not voluntarily halt

1 shipments of controlled substances to
2 registrants involved in suspected
3 diversion or to registrants against whom
4 previous action has been taken."

5 Q. Is this consistent with the
6 guidance provided by the DEA to
7 registrants since at least 1996?

8 A. Yes.

9 MS. MAINIGI: Objection to
10 form.

11 BY MR. FARRELL:

12 Q. This last sentence that you
13 read contains a statement that "a
14 registrant shall not ship a suspicious
15 order." Is that a fair reading?

16 MR. FINKELSTEIN: Objection.

17 MR. EPPICH: Objection to
18 form.

19 MR. FINKELSTEIN: Object to
20 the form.

21 BY MR. FARRELL:

22 Q. Strike that. I'll ask it
23 again.

24 Based upon this 1996

1 document, was it the DEA's position that
2 a registrant should halt shipments of
3 controlled substances that are involved
4 in suspected diversion?

5 A. Yes.

6 Q. And does that include when a
7 registrant has placed orders repeatedly
8 in excess of the regional average?

9 MR. EPPICH: Objection to
10 form.

11 MS. MAINIGI: Objection to
12 form.

13 THE WITNESS: Yes.

14 (Document marked for
15 identification as Exhibit
16 DEA-Prevoznik-P-10.)

17 BY MR. FARRELL:

18 Q. I'm going to have marked
19 next Plaintiffs' Exhibit 10. And I'll
20 show it to you and provide a copy to
21 counsel and ask that you take a look at
22 it, please.

23 MR. FINKELSTEIN: Let me
24 make sure that I get one of those.

1 MR. FARRELL: And for
2 reference to counsel this is
3 Bates-stamped
4 CAH_MDL2804_02203353.

5 BY MR. FARRELL:

6 Q. Mr. Prevoznik, do you
7 recognize this type of document?

8 MS. MAINIGI: Objection to
9 form.

10 THE WITNESS: Yes.

11 BY MR. FARRELL:

12 Q. And what is it that you're
13 looking at?

14 A. A FOIA request.

15 Q. And the FOIA request was
16 sent by whom?

17 A. Cardinal Health.

18 Q. And to whom was it sent?

19 A. Robert -- I don't know how
20 to say his last name -- Giacalone.

21 Q. All right. So let's back
22 up.

23 This is a request -- this
24 isn't a request by Cardinal Health. The

1 document is from whom?

2 MS. MAINIGI: Objection to
3 form. Foundation.

4 THE WITNESS: I'm sorry,
5 it -- it's Katherine Myrick. It's
6 from Katherine Myrick, chiefs
7 operations unit, our FOIA records
8 management section.

9 BY MR. FARRELL:

10 Q. What is this document that
11 you're looking at, do you recognize it?

12 MS. MAINIGI: Objection.
13 Form. Foundation.

14 BY MR. FARRELL:

15 Q. Not the attached document,
16 the cover letter.

17 MS. MAINIGI: Same
18 objections.

19 THE WITNESS: Yeah, I've --
20 I've seen forms very similar to
21 this.

22 BY MR. FARRELL:

23 Q. Okay. And so what does the
24 DEA use this form for?

1 MS. MAINIGI: Objection.

2 Form. Foundation.

3 THE WITNESS: To respond

4 to --

5 MR. FINKELSTEIN: Scope.

6 THE WITNESS: To respond to

7 FOIA requests.

8 BY MR. FARRELL:

9 Q. Okay. So you see where it
10 says request number?

11 A. Yes.

12 Q. Okay. Does the DEA know
13 what that number means or represents?

14 MR. FINKELSTEIN: Scope.

15 MS. MAINIGI: Objection.

16 Scope. Foundation.

17 THE WITNESS: Yes.

18 BY MR. FARRELL:

19 Q. Okay. What does that number
20 mean?

21 MS. MAINIGI: Same
22 objection.

23 THE WITNESS: That is the
24 number that is assigned to this

1 FOIA request when it comes in.

2 BY MR. FARRELL:

3 Q. Is there any particular
4 significance of the first two letters
5 being -- numbers being 03?

6 MR. FINKELSTEIN: Scope.

7 BY MR. FARRELL:

8 Q. To -- to the extent that you
9 know as the Drug Enforcement Agency that
10 wrote this document?

11 A. It's the year.

12 MS. MAINIGI: Objection.

13 Scope. Foundation.

14 BY MR. FARRELL:

15 Q. So this is, to the DEA's
16 best knowledge and information, a
17 document that was generated in the year
18 2003?

19 A. Yes.

20 MR. EPPICH: Object to form.

21 BY MR. FARRELL:

22 Q. And it was generated by you,
23 the DEA, and sent to Cardinal Health?

24 MS. MAINIGI: Objection.

1 Foundation. Scope.

2 MR. FINKELSTEIN: Scope.

3 THE WITNESS: Yes.

4 BY MR. FARRELL:

5 Q. And then when you look at
6 the document that is attached, can you
7 tell me what it -- that document is if
8 you know?

9 A. It's a section from our
10 diversion investigators manual. And this
11 is the cover sheet from our diversion
12 investigators manual.

13 Q. And what year is this
14 diversion investigators manual?

15 A. 1996, April 1996.

16 Q. If you would take a moment,
17 could you tell me whether or not this
18 document that was produced by Cardinal is
19 consistent with the diversion
20 investigators manual that we just went
21 over, produced by the federal government?

22 MS. MAINIGI: Objection.

23 Form. Foundation.

24 THE WITNESS: Yes, it does.

1 BY MR. FARRELL:

2 Q. Is it fair to reach the
3 conclusion that the DEA disclosed to
4 Cardinal Health in the year 2003
5 Section 5126 of the 1996 diversion
6 investigators manual?

7 MS. MAINIGI: Objection.
8 Scope. Foundation.

9 MR. FINKELSTEIN: Scope.

10 THE WITNESS: Yes.

11 BY MR. FARRELL:

12 Q. The next document that I am
13 going to reference, it was produced and
14 circulated yesterday, but we have
15 additional copies, is the 1998 Janet Reno
16 report.

17 (Document marked for
18 identification as Exhibit
19 DEA-Prevoznik-P-11.)

20 BY MR. FARRELL:

21 Q. I'm going to hand you what
22 has been premarked as deposition
23 plaintiff Exhibit 11. And have you take
24 a look at it.

1 MR. FARRELL: Does anybody
2 else need another copy from
3 yesterday?

4 It's the same one. It's
5 Bates Stamp CAH_HOUSE-002207. And
6 it's double-Bates-stamped as
7 CAH_MDL_PRIORPROD_HOUSE_0002207.

8 Off the record.

9 (Whereupon, a discussion was
10 held off the record.)

11 BY MR. FARRELL:

12 Q. Mr. Prevoznik, do you
13 recognize this document?

14 A. Yes.

15 Q. What is it?

16 A. It's a report to the U.S.
17 attorneys -- Attorney General. It's a
18 report by the suspicious orders task
19 force that was mandated to convene, and
20 it's their report based on the
21 Comprehensive Methamphetamine Control Act
22 in 1996.

23 Q. To the best of your
24 knowledge, is this a true and accurate

1 copy of the report provided by the United
2 States Drug Enforcement Administration to
3 Attorney General Janet Reno?

4 A. To the best of my knowledge,
5 yes.

6 Q. What is the date of the
7 document?

8 A. October 1998.

9 Q. All right. Go to the next.
10 So I'm going to refer you to
11 page Bates stamp 2211. So this is in the
12 executive summary. And if you'll see the
13 second full sentence. There it is.

14 Can you tell me what the
15 implementation mandate was for this
16 report provided by the DEA to Attorney
17 General Janet Reno?

18 MS. MAINIGI: Objection.
19 Foundation.

20 THE WITNESS: It was the
21 mandate that this task force
22 convene together and come up with
23 a report based on their
24 discussions.

1 BY MR. FARRELL:

2 Q. All right. So in general,
3 can you just, as the DEA, tell me, when
4 we reference this document, can we just
5 call it the Reno report?

6 A. Yes.

7 Q. Can you tell me in general,
8 do you -- does the DEA have an
9 understanding of what the purpose was of
10 this report that it generated for the
11 Attorney General?

12 A. It is our understanding that
13 this report was to discuss how to put a
14 suspicious ordering system forward to
15 handle the listed chemicals because of
16 the methamphetamine problem that we were
17 having in the United States.

18 Q. Now, this is also from the
19 executive summary. And it says that "the
20 charter required the establishment of a
21 task force to prepare recommendations
22 concerning additional guidelines to be
23 used by the chemical industry in
24 complying with 21 U.S.C. 830(b)(1)(A)."

1 Did I read that accurately?

2 A. Yes.

3 Q. Are you familiar with
4 21 U.S.C. 830(b)(1)(A)?

5 A. Can I look at it and refresh
6 my memory?

7 Q. You can. We have a -- I
8 believe we have a slide for you. And
9 it's also probably in -- in --

10 MR. FARRELL: You have it?

11 There we go.

12 BY MR. FARRELL:

13 Q. And I'm going to show you
14 the hardcopy of it and then we have
15 copies of this --

16 MR. FINKELSTEIN: He has his
17 own copy.

18 BY MR. FARRELL:

19 Q. Very good.

20 This provision that we're
21 looking at, and the distinction that I
22 want to make, what is the DEA's
23 understanding of the types of
24 transactions that should be reported as

1 suspicious pursuant to 21 U.S.C. 830?

2 MR. FINKELSTEIN: Scope.

3 MS. MAINIGI: Objection.

4 Form. Foundation. Scope.

5 THE WITNESS: To regulate

6 a -- regulated transactions, a

7 transaction for -- in this

8 particular section, regarding

9 chemicals.

10 BY MR. FARRELL:

11 Q. So we are talking about

12 List I chemicals, not controlled

13 substances?

14 A. Correct.

15 Q. And when we are talking

16 about methamphetamine, what we are

17 specifically talking about are regulated

18 chemicals the DEA refers to as List I,

19 which include ephedrine and

20 pseudoephedrine?

21 MR. FINKELSTEIN: Scope.

22 THE WITNESS: Correct.

23 MS. MAINIGI: Objection to

24 form.

1 BY MR. FARRELL:

2 Q. I promise I'll get there in
3 a second.

4 So under this report, it's
5 my understanding, is that the DEA was
6 complying with Section 21 U.S.C. 830,
7 which, if you read Paragraph 1(a) out
8 loud, requires what? Reports to the
9 Attorney General. It says, "Each
10 regulated person shall report to the
11 Attorney General." And what does A say?

12 MR. STEPHENS: Object to
13 form.

14 THE WITNESS: "Any regulated
15 transaction involving an
16 extraordinary quantity of a listed
17 chemical, an uncommon method of
18 payment or delivery, or any other
19 circumstance that the regulated
20 person believes may indicate that
21 the listed chemical will be used
22 in violation of this subchapter."

23 BY MR. FARRELL:

24 Q. So, I'm asking the DEA, the

1 Reno report from 1998, its authority
2 arises out of the Methamphetamine Act; is
3 that right?

4 MR. STEPHENS: Object to
5 form.

6 MS. MAINIGI: Objection.
7 Scope.

8 MR. FINKELSTEIN: Scope.

9 THE WITNESS: Yes.

10 BY MR. FARRELL:

11 Q. And the definition of a
12 suspicious order under the
13 Methamphetamine Act is what? What size
14 transaction?

15 A. The extraordinary quantity.

16 Q. All right. Now, controlled
17 substances are not governed by the
18 methamphetamine act unless they contain
19 ephedrine or pseudoephedrine; is that
20 right?

21 MR. STEPHENS: Object to
22 form.

23 BY MR. FARRELL:

24 Q. I'm asking you, the DEA?

1 A. Yeah. I'm waiting to make
2 sure --

3 MS. MAINIGI: Objection.
4 Scope and foundation.

5 MR. FINKELSTEIN: Scope.

6 THE WITNESS: Yes.

7 BY MR. FARRELL:

8 Q. What size transaction should
9 registrants look for when they're looking
10 for suspicious orders of controlled
11 substances?

12 A. Unusual -- excessive.
13 Excessive.

14 Q. And a definition of
15 suspicious order in the regulation, is
16 unusual what?

17 A. Unusual quantity.

18 MS. MAINIGI: Objection to
19 form.

20 BY MR. FARRELL:

21 Q. Unusual size --

22 MS. MAINIGI: Objection to
23 form.

24 THE WITNESS: Unusual size,

1 patterns deviating from a
2 normal -- can I refresh my memory
3 just looking at it?

4 BY MR. FARRELL:

5 Q. Go ahead, yeah. You see
6 where I'm going with this. I'm trying to
7 figure out the difference and whether
8 there's a difference between the
9 definition of a suspicious order, if it
10 contains a List I chemical versus the
11 definition of suspicious order if it's a
12 controlled substance.

13 MS. MAINIGI: Objection.
14 Coaching the witness. Objection
15 to form.

16 THE WITNESS: So suspicious
17 orders for controlled substances
18 include orders of unusual size,
19 orders deviating substantially
20 from a normal pattern, and orders
21 of unusual frequency.

22 BY MR. FARRELL:

23 Q. So from the DEA's
24 perspective, what is bigger? Unusual or

1 extraordinary?

2 MS. MAINIGI: Objection.

3 Scope. Objection. Form.

4 MR. EPPICH: Objection.

5 Calls for a legal conclusion.

6 MR. FINKELSTEIN: I object
7 to the scope. You can answer.

8 THE WITNESS: Can you repeat
9 it?

10 BY MR. FARRELL:

11 Q. Yeah. From the DEA's
12 perspective and guidance that it provides
13 to industry, what is larger, an order
14 that's unusual, or an order that's
15 extraordinary?

16 MS. MAINIGI: Objection.
17 Scope, form, foundation.

18 MR. EPPICH: Objection.
19 Calls for a legal conclusion.

20 MR. FINKELSTEIN: Scope,
21 calls for a legal conclusion.

22 THE WITNESS: I believe it's
23 going to be dependent on the
24 product too. So it's not -- it's

1 not just on size or extraordinary.
2 It's varying criteria. It could
3 be other criteria. So is it a
4 chemical? Is it a controlled
5 substance? What schedule is it
6 in? That kind of thing.

7 BY MR. FARRELL:

8 Q. Because it -- comparing a
9 List I chemical to a controlled
10 substance, is comparing apples to
11 oranges; is that fair?

12 MR. STEPHENS: Object to
13 form.

14 THE WITNESS: Yes.

15 MR. EPPICH: Objection.

16 Vague.

17 BY MR. FARRELL:

18 Q. Okay. So when you're trying
19 to apply -- if you're selling an
20 extraordinary quantity of opioids, is
21 that more than, equal to, or less than
22 unusual sizes?

23 MS. MAINIGI: Objection.

24 Scope. Objection.

1 MR. EPPICH: Objection.

2 Calls for a legal conclusion.

3 MR. FINKELSTEIN: Object to
4 the form.

5 THE WITNESS: Can you please
6 repeat it.

7 BY MR. FARRELL:

8 Q. Yeah, I'm trying to get
9 there. I'm trying to establish --
10 because has the DEA ever told any
11 distributor of prescription opioids that
12 it can use the definition of suspicious
13 order from the Methamphetamine Act?

14 MR. EPPICH: Objection to
15 form. Foundation.

16 THE WITNESS: The term --
17 the term that you used, "ever,"
18 that's all encompassing. So I
19 don't know that I can -- I cannot
20 testify that no one has ever said
21 that.

22 BY MR. FARRELL:

23 Q. So what I'm going to refer
24 back to is this.

1 Let's go to Page 2247 of the
2 Reno report. This was discussed at
3 length yesterday. Do you recall this,
4 Exhibit 2?

5 A. Yes.

6 Q. Okay. So the first thing I
7 want you to -- so the first thing that
8 we're going to do is we're going to look
9 at where it says "Note: Factor equals
10 three."

11 Okay. So this was discussed
12 yesterday. I'm just trying to find
13 clarification.

14 This Reno report, according
15 to this note, applies to List I
16 chemicals, agreed?

17 A. Yes.

18 MR. FINKELSTEIN: Wait.

19 THE WITNESS: Sorry.

20 MR. FINKELSTEIN: Scope.

21 MS. MAINIGI: Objection.

22 Foundation.

23 BY MR. FARRELL:

24 Q. Second -- secondly, it can

1 apply to Control II and Control III
2 controlled substances that contain List I
3 chemicals. Agreed or disagree?

4 MS. MAINIGI: Objection.
5 Scope. Foundation.

6 MR. O'CONNOR: Objection to
7 form.

8 THE WITNESS: Agreed.

9 BY MR. FARRELL:

10 Q. And it applies to Control
11 III. And what does that mean N-V? "N-V
12 controlled substances and noncontrolled
13 over-the-counter products containing
14 List I chemical items."

15 Do you know what that means?

16 A. Looking at it, I would be
17 speculating what it means.

18 Based on what I know, that
19 looks like III-N, would be III,
20 non-narcotic.

21 Q. So more directly, has the
22 DEA ever provided -- I keep using that
23 word "ever."

24 Has the DEA -- does the DEA

1 believe that this algorithm is
2 appropriate for measuring as a metric
3 suspicious orders of controlled
4 substances that do not include List I
5 chemicals?

6 MR. EPPICH: Object to form.

7 MS. MAINIGI: Objection.

8 Scope.

9 THE WITNESS: Can you please
10 repeat that.

11 BY MR. FARRELL:

12 Q. Yes. We agree that this
13 document we're looking at from the Reno
14 report is guidance from the DEA to
15 registrants under the Methamphetamine Act
16 regarding looking for orders of
17 extraordinary size involving List I
18 chemicals. That's been established. And
19 I'm asking you whether or not you agree
20 with it.

21 MR. FINKELSTEIN: Scope.

22 MS. MAINIGI: Objection to
23 form.

24 MR. EPPICH: Objection.

1 THE WITNESS: Yes.

2 BY MR. FARRELL:

3 Q. There was a suggestion made
4 by some of defense counsel yesterday
5 during your examination that it also
6 applies to controlled substances.

7 And so what I would like you
8 to do is take a look at the note and tell
9 me whether or not that note indicates,
10 pursuant to the DEA's understanding,
11 whether or not this applies to all
12 controlled substances, or just controlled
13 substances that contain List I chemicals
14 or some other interpretation that I'm
15 missing?

16 MS. MAINIGI: Objection.
17 Form.

18 Objection. Coaching the
19 witness.

20 MR. FINKELSTEIN: I object
21 to the scope.

22 But you can answer in your
23 personal capacity, if you know.

24 THE WITNESS: Yes, I agree.

1 BY MR. FARRELL:

2 Q. So the DEA agrees that this
3 applies only to List I chemicals and
4 controlled substances that contain List I
5 chemicals, agreed?

6 MR. FINKELSTEIN: Hang on.
7 My instruction was you could ask
8 Tom Prevoznik if he agrees,
9 because this is not within the
10 scope of his authorization.

11 MS. SINGER: Though it does
12 relate to guidance the DEA
13 provided to registrants. That is
14 the context in which defendants
15 offered it yesterday.

16 MR. FINKELSTEIN: I
17 understand the defendants
18 offered -- offered it yesterday.
19 And I made the same objections
20 there.

21 This is about chemicals. We
22 are talking about controlled
23 substances. You can answer in
24 your personal capacity.

1 MR. FARRELL: Well, I -- I
2 don't -- respectfully don't need
3 his personal capacity. I need the
4 DEA's position on whether or not
5 the Reno report is --

6 BY MR. FARRELL:

7 Q. Let me ask you this. Let me
8 ask you in a different way.

9 Has the DEA ever provided
10 guidance to a registrant that it is
11 appropriate in the context of controlled
12 substances, which do not include List I
13 chemicals, to define suspicious orders as
14 orders of extraordinary quantity?

15 MR. EPPICH: Objection.
16 Foundation.

17 MS. MAINIGI: Objection.
18 Form.

19 THE WITNESS: Again, you
20 used the word ever. I can't -- I
21 don't know if that's never not
22 happened.

23 BY MR. FARRELL:

24 Q. That's -- that's fair.

1 Speaking on behalf of the
2 DEA, do you believe that the Reno report
3 is an appropriate standard to measure
4 suspicious orders of controlled
5 substances that do not contain List I
6 chemicals?

7 MS. MAINIGI: Objection.
8 Scope. Foundation.

9 MR. EPPICH: Form.

10 THE WITNESS: Please repeat
11 that.

12 BY MR. FARRELL:

13 Q. Has the DEA provided
14 guidance to registrants that it can
15 monitor suspicious orders of List I
16 chemicals using the Reno report?

17 A. Not to my knowledge.

18 Q. I forgot what I asked you.

19 (Whereupon, the court
20 reporter read back the requested
21 portion of testimony.)

22 BY MR. FARRELL:

23 Q. What is the purpose of the
24 Reno report?

1 MR. FINKELSTEIN: Scope.

2 MS. MAINIGI: Objection.

3 MR. EPPICH: Objection.

4 Foundation.

5 MR. FARRELL: You're right.

6 This is -- is she back yet?

7 Do we have the Cardinal

8 Health documents yet?

9 Let's take a quick break if
10 you don't mind.

11 MR. FINKELSTEIN: Okay. I'd
12 like this to be our last break.
13 And we're going to break for the
14 day at 5.

15 MR. FARRELL: Yeah.

16 THE VIDEOGRAPHER: 3:35. We
17 are off the video record.

18 (Short break.)

19 THE VIDEOGRAPHER: 3:49. We
20 are on the video record.

21 BY MR. FARRELL:

22 Q. I'm going to try to go at
23 this through a different route.

24 I'm going to show you what

1 has been premarked as Plaintiffs'
2 Exhibit 12 to your deposition.

3 (Document marked for
4 identification as Exhibit
5 DEA-Prevoznik-P-12.)

6 MR. FARRELL: I have copies,
7 four copies for counsel. I have a
8 copy for the DOJ. And a copy for
9 you.

10 THE WITNESS: Thank you.

11 BY MR. FARRELL:

12 Q. And I'll represent to you
13 that this is not a document that you've
14 seen before.

15 But this is Cardinal
16 Health's Third Supplemental Objections
17 and Responses to Plaintiffs' First
18 Combined Discovery Requests served in
19 this litigation.

20 And I -- I'll give you a
21 moment to get oriented with it. But
22 eventually I'm going to be directing your
23 attention to Page 12.

24 Now, specifically what I'm

1 going to reference you to on Page 12 is
2 the last paragraph.

3 And it -- and Cardinal
4 Health says, "From at least 1995 through
5 late 2007, Cardinal Health understood DEA
6 to want suspicious orders reported to the
7 administration in the form of ingredient
8 limit reports."

9 Do you see that?

10 A. Yes.

11 MS. MAINIGI: Objection to
12 form.

13 BY MR. FARRELL:

14 Q. My question to you as the
15 representative from the DEA, is, has the
16 DEA ever provided guidance to Cardinal
17 Health that it could -- that it could
18 report suspicious orders through the use
19 of ingredient limit reports?

20 MS. MAINIGI: Objection.

21 Scope. Objection. Form.

22 Objection. Foundation.

23 MR. FINKELSTEIN: I join the
24 scope objection to the extent that

1 it calls for guidance outside of
2 the distributor initiative.

3 BY MR. FARRELL:

4 Q. You can answer.

5 A. I'm just reading -- can I --

6 Q. Absolutely.

7 A. Again, I'm just getting
8 familiar with it.

9 Please repeat the question.

10 Q. Yeah, what I'll do is I'll
11 start over.

12 The very first sentence,
13 you'll see Cardinal Health represents
14 from at least '95 through 2007, Cardinal
15 Health understood DEA to want suspicious
16 orders reported to the administration in
17 the form of ingredient limit reports.

18 Do you see that sentence?

19 MS. MAINIGI: Objection to
20 form.

21 BY MR. FARRELL:

22 Q. That's exactly what it says,
23 correct?

24 A. Yes.

1 MS. MAINIGI: Objection.

2 Coaching the witness.

3 BY MR. FARRELL:

4 Q. And so the next sentence,
5 could you read it aloud?

6 A. "Based on guidance from the
7 DEA, see example,
8 CAH_MDL_PRIORPROD_HOUSE_0002207 --

9 Q. Stop right there for a
10 second. Do you recognize that Bates
11 stamp number?

12 A. Yes.

13 Q. Where do you recognize that
14 Bates stamp number from?

15 A. The Reno report.

16 Q. The exhibit that we just
17 went over?

18 A. That we referred -- yes,
19 right.

20 Q. So this is Cardinal Health
21 representing in this litigation that it
22 understood that it was based on guidance
23 from the DEA using that Reno report.

24 My question to you is, is

1 the DEA ever aware of providing such
2 guidance to Cardinal Health?

3 MS. MAINIGI: Objection.

4 Form. Objection. Scope.

5 Objection. Coaching the witness.

6 THE WITNESS: Again, the use
7 of ever, I don't -- I don't -- I
8 don't know.

9 BY MR. FARRELL:

10 Q. Do you have any knowledge of
11 providing such guidance to Cardinal
12 Health?

13 MS. MAINIGI: Objection.

14 Asked and answered. Objection.

15 Form. Scope.

16 THE WITNESS: I am not
17 aware.

18 BY MR. FARRELL:

19 Q. Will you continue reading?

20 A. "Cardinal Health understood
21 DEA to want orders for opioids reported
22 that exceeded a calculation endorsed by
23 DEA or that a wholesale distributor
24 otherwise identified as unusual in size,

1 pattern or frequency."

2 Q. Are you aware of the DEA
3 ever endorsing a calculation for opioids
4 to identify orders of unusual size,
5 pattern, or frequency?

6 A. No.

7 MS. MAINIGI: Objection.

8 Form. Objection. Scope.

9 BY MR. FARRELL:

10 Q. Is it appropriate and
11 compliant with federal law for a
12 registrant to use the Reno report as the
13 methodology in which it measures
14 suspicious orders of opioids that do not
15 contain List I chemicals?

16 MS. MAINIGI: Objection.

17 Calls for a legal conclusion.

18 Form.

19 MR. FINKELSTEIN: Vague.

20 THE WITNESS: Well, the
21 statute requires the registrant to
22 design and operate the system.

23 BY MR. FARRELL:

24 Q. Let's be clear about which

1 statute we are talking about.

2 A. Correct.

3 Q. Which one are you reading
4 from?

5 A. I'm reading from the C.F.R.

6 Q. For List I chemicals?

7 A. Controlled substances.

8 Q. Controlled substances. And
9 how does it define suspicious orders?

10 A. Again, "Suspicious orders
11 include orders of unusual size, orders
12 deviating substantially from a normal
13 pattern, or" -- "and orders of unusual
14 frequency."

15 Q. Now, I'd like you to flip to
16 List I chemicals. What is the DEA's rule
17 on looking for suspicious orders of
18 List I chemicals?

19 MS. MAINIGI: Objection.

20 Scope. Form.

21 BY MR. FARRELL:

22 Q. Do you have the C.F.R. or
23 the --

24 A. C.F.R.

1 Q. It's one of the exhibits.

2 Try 1310.05.

3 A. .05 and what section? A-1.

4 Q. A-1.

5 A. "Extraordinary quantity of a
6 listed chemical, an uncommon method of
7 payment or delivery, or any other
8 circumstance that the regulated person
9 believes may indicate that the listed
10 chemical will be used in violation of
11 this part."

12 Q. So my question to the DEA,
13 is, did the DEA ever provide guidance to
14 Cardinal Health that it could use the
15 Reno report's definition of suspicious,
16 which is extraordinary size, as the
17 algorithm for measuring unusual orders of
18 controlled substances?

19 MS. MAINIGI: Objection.

20 Scope, form.

21 MR. FINKELSTEIN: Scope.

22 THE WITNESS: Not to my
23 knowledge.

24 BY MR. FARRELL:

1 Q. This is Cardinal Health in
2 its pleading in this litigation, telling
3 the court that the DEA endorsed it to use
4 the Reno report to monitor suspicious
5 orders of controlled substances,
6 including opioids. Is that statement
7 true or not true?

8 MS. MAINIGI: Objection.

9 Form. Coaching witness. Scope.

10 MR. FINKELSTEIN: Scope.

11 THE WITNESS: Can you repeat
12 the question?

13 BY MR. FARRELL:

14 Q. Cardinal Health is stating
15 in its discovery responses to the court
16 that the DEA provided guidance to them,
17 that they could use the Reno report and
18 its algorithm for orders of extraordinary
19 size to identify unusual orders of
20 controlled substances.

21 Are you aware of the DEA
22 providing such guidance to Cardinal
23 Health?

24 MS. MAINIGI: Objection.

1 Form. Coaching the witness.

2 Scope.

3 MR. FINKELSTEIN: Scope.

4 THE WITNESS: I am not
5 aware.

6 BY MR. FARRELL:

7 Q. Is it the DEA's position
8 that using an algorithm for extraordinary
9 size is an appropriate measurement of
10 orders of unusual size for controlled
11 substances?

12 MS. MAINIGI: Objection.
13 Form.

14 MR. EPPICH: Objection.
15 Scope.

16 MR. FINKELSTEIN: Form.

17 THE WITNESS: No.

18 BY MR. FARRELL:

19 Q. In fact, in the Reno report,
20 the DEA provided recommendation and
21 guidance to registrants that it could
22 look for orders of extraordinary size of
23 List I chemicals using a factor of three.
24 Is that correct?

1 MR. EPPICH: Object to form.

2 MS. MAINIGI: Objection

3 scope.

4 MR. FINKELSTEIN: Scope.

5 THE WITNESS: Yes.

6 BY MR. FARRELL:

7 Q. Would it be appropriate for
8 a registrant to use a factor of four to
9 look for orders of unusual size of
10 controlled substances?

11 MS. MAINIGI: Objection.

12 Foundation. Objection. Scope.

13 MR. FINKELSTEIN: Incomplete
14 hypothetical.

15 MR. EPPICH: Objection.

16 Form.

17 THE WITNESS: I don't know.

18 I don't know what factor three,
19 factor four -- factor -- I don't
20 know what those factors are.

21 BY MR. FARRELL:

22 Q. Okay. So let's go and look
23 at page -- on the Reno report,
24 Bates-stamped 2247. So if you look at

1 Paragraph 1, is this the guidance that
2 the DEA was providing to registrants as
3 the current calculation being used to
4 look for orders of extraordinary size of
5 List I chemicals?

6 MR. EPPICH: Objection.
7 Foundation.

8 MR. FINKELSTEIN: Scope.

9 THE WITNESS: Yes.

10 BY MR. FARRELL:

11 Q. So there appear to be five
12 steps that DEA was providing guidance
13 for, agreed?

14 MR. EPPICH: Objection.
15 Foundation. Form.

16 THE WITNESS: Yes.

17 BY MR. FARRELL:

18 Q. And will you read paragraph
19 Step 1?

20 A. "Add purchase quantities for
21 the last 12 months for all customers
22 within same distribution center and for
23 customer type (hospital, pharmacy or
24 other) for any List I chemical-containing

1 item stocked by the distribution center."

2 Q. So in Step 1, it appears
3 that the guidance the DEA is providing is
4 for a registrant to add the purchase
5 quantities for the last 12 months by a
6 customer of List I chemicals within the
7 same distribution center for the same
8 customer type, agreed?

9 MR. FINKELSTEIN: Scope.

10 MS. MAINIGI: Objection.

11 Scope.

12 MR. EPPICH: Objection.

13 Form. Foundation.

14 THE WITNESS: Yes.

15 BY MR. FARRELL:

16 Q. And then on Number 2, it
17 says, "Add customer months for every
18 record used in above total."

19 Did I read that accurately?

20 MR. EPPICH: Objection.

21 Form and foundation.

22 THE WITNESS: Yes.

23 BY MR. FARRELL:

24 Q. Step 3 is to divide that

1 total quantity by the total customer
2 months.

3 Did I read that accurately?

4 MR. EPPICH: Objection form
5 and foundation.

6 THE WITNESS: Yes.

7 BY MR. FARRELL:

8 Q. Very good. Now, once we do
9 this math -- it's not so fuzzy -- what it
10 gives us, is it gives us the average
11 purchases by a customer per month for the
12 past year, agreed?

13 MR. EPPICH: Object to form.

14 MR. FINKELSTEIN: Scope.

15 THE WITNESS: Agreed.

16 BY MR. FARRELL:

17 Q. And then under Paragraph 4,
18 it says multiply that by a factor. And
19 that gives us the maximum amount that the
20 customer can order per month before
21 showing up on a suspicious order report.
22 Do you see that?

23 A. Yes.

24 Q. So again, this is for List I

1 chemicals arising out of methamphetamine
2 act and the guidance provided by the DEA
3 to Attorney General Janet Reno, and the
4 recommendation is that when you're
5 looking for orders of extraordinary size
6 of List I chemicals, ephedrine,
7 pseudoephedrine, a registrant should look
8 for like-size groups of customers from a
9 distribution facility, add up the total
10 by base weight over the past 12 months,
11 divide it by 12, and multiply it by a
12 factor. Agreed?

13 MR. EPPICH: Objection to
14 form.

15 MS. MAINIGI: Objection to
16 form. Mischaracterizes the
17 report.

18 MR. EPPICH: Objection.
19 Foundation.

20 MR. FINKELSTEIN: Scope.
21 You can answer.

22 THE WITNESS: Agreed.

23 BY MR. FARRELL:

24 Q. It says here, "The" -- "The

1 factor should be for three, for
2 Control II and Control III controlled
3 substances containing List I chemicals."

4 Do you see that?

5 A. Yes.

6 MR. EPPICH: Objection to
7 form.

8 BY MR. FARRELL:

9 Q. Now, if it's just a pure
10 List I chemical, and it doesn't
11 contain -- I'm sorry, the other way
12 around.

13 If you take the factor of
14 three for List I chemicals, it gives you
15 the maximum amount before a suspicious
16 order is triggered. That's the factor
17 the DEA is recommending registrants use
18 for List I chemicals.

19 Agreed?

20 MR. EPPICH: Object to form.

21 MR. FINKELSTEIN: Scope.

22 THE WITNESS: Agreed.

23 BY MR. FARRELL:

24 Q. Okay. So my question to you

1 is, is it appropriate to use this
2 standard for controlled substances that
3 don't include List I chemicals?

4 MS. MAINIGI: Objection.
5 Form. Foundation.

6 MR. FINKELSTEIN: Can I get
7 the question back?

8 I'm sorry, because my
9 realtime -- can you ask it again?

10 (Whereupon, the court
11 reporter read back the requested
12 portion of testimony.)

13 MR. FINKELSTEIN: Okay. You
14 can answer.

15 THE WITNESS: Can you repeat
16 it?

17 MR. FINKELSTEIN: Can you
18 repeat it?

19 BY MR. FARRELL:

20 Q. By using this methodology,
21 you are providing guidance to registrants
22 to identify extraordinary orders of
23 List I chemicals by using a multiplier of
24 three times the monthly average for a

1 similar customer.

2 Is that fair?

3 MR. EPPICH: Object to the
4 form.

5 MS. MAINIGI: Objection.
6 Form. Foundation.

7 THE WITNESS: Correct.

8 BY MR. FARRELL:

9 Q. Has the DEA provided
10 guidance to registrants of controlled
11 substances that don't include List I
12 chemicals that it can multiply the
13 monthly average by three to identify
14 orders that are merely unusual?

15 MS. MAINIGI: Objection.
16 Foundation. Form.

17 MR. EPPICH: Objection.
18 Scope.

19 THE WITNESS: Not to my
20 knowledge.

21 BY MR. FARRELL:

22 Q. So if you're using a
23 measuring stick that the DEA has
24 provided --

1 MS. MAINIGI: May I ask for
2 clarification, Counsel? Is that
3 to your personal knowledge?

4 MR. FARRELL: Enu, you --
5 you can have redirect. He's
6 testifying in his official
7 capacity, so --

8 MR. FINKELSTEIN: I'll say
9 he's here to testify about
10 industrywide guidance, and I took
11 the question in that spirit.

12 And you can ask -- you can
13 ask your next question.

14 BY MR. FARRELL:

15 Q. So if -- if a registrant is
16 making -- are you aware of ever making --
17 providing guidance to a registrant that
18 it could use the Reno report as an
19 effective tool to monitor suspicious
20 orders of controlled substances that
21 don't include List I chemicals?

22 MS. MAINIGI: Objection.

23 Form. Foundation. Scope.

24 MR. FINKELSTEIN: That

1 question isn't about industrywide
2 guidance. I join the scope
3 objection.

4 BY MR. FARRELL:

5 Q. Let me try it again then.

6 Has the DEA ever provided
7 industrywide guidance that it could use
8 the definition of suspicious order for
9 the List I chemicals under the
10 methamphetamine act for orders of
11 controlled substances that do not include
12 List I chemicals?

13 A. Not to my knowledge.

14 MS. MAINIGI: Objection to
15 form.

16 BY MR. FARRELL:

17 Q. So now let's go back to
18 Cardinal's combined discovery requests.
19 Page 12.

20 In the context of the first
21 sentence, has the DEA ever provided
22 guidance to registrants, which are, in
23 this case, distributors of Control II
24 prescription opioids, that it satisfies

1 its compliance obligations under federal
2 law by submitting after-the-fact
3 ingredient limit reports?

4 MS. MAINIGI: Objection.

5 Form. Objection. Foundation.

6 MR. FINKELSTEIN: Scope.

7 THE WITNESS: Not to my
8 knowledge.

9 BY MR. FARRELL:

10 Q. Now, you'll recall from the
11 1996 diversion investigators manual, if
12 you'll flip back to it, which is
13 Exhibit 11.

14 A. I'll use mine. The '96 one?

15 Q. The '96 one.

16 Is there any reference to
17 an -- an approved factor to be used by a
18 registrant to identify unusual orders of
19 controlled substances?

20 MS. MAINIGI: Objection --
21 excuse me. Objection to form.

22 THE WITNESS: No.

23 BY MR. FARRELL:

24 Q. If a registrant used a

1 factor to increase -- that's a bad
2 question.

3 Are you aware of the DEA
4 ever endorsing the use of a factor to use
5 in the calculation of unusual orders of
6 controlled substances that do not include
7 List I chemicals?

8 MR. EPPICH: Objection to
9 form.

10 MR. FINKELSTEIN: Scope.

11 THE WITNESS: Again, it's
12 the use of the word ever.

13 I am not -- I am not aware,
14 but I have concerns of the word of
15 the use ever.

16 BY MR. FARRELL:

17 Q. Is a registrant that uses
18 the factor when calculating orders of
19 unusual size of controlled substances
20 that do not include List I chemicals,
21 compliant with federal regulations?

22 MR. STEPHENS: Object to
23 form.

24 MR. FINKELSTEIN: Calls for

1 a legal conclusion.

2 MS. MAINIGI: Join.

3 THE WITNESS: Could you
4 please repeat it?

5 BY MR. FARRELL:

6 Q. Would the DEA ever endorse a
7 methodology for use by a registrant that
8 multiplied a monthly average by four to
9 determine orders of unusual size?

10 MR. EPPICH: Object to form.
11 Foundation.

12 MS. MAINIGI: Calls for
13 speculation.

14 THE WITNESS: DEA doesn't
15 endorse the systems.

16 BY MR. FARRELL:

17 Q. Is using a factor of four
18 when calculating orders of unusual size
19 compliant with federal regulations
20 according to the DEA?

21 MS. MAINIGI: Objection.
22 Calls for a legal conclusion.
23 Form.

24 THE WITNESS: Not to my

1 knowledge.

2 BY MR. FARRELL:

3 Q. Now, in -- in other places
4 I'll represent to you that some
5 registrants of controlled substances that
6 do not include List I chemicals are
7 relying upon the chemical handlers
8 manual. That fact will be established in
9 the record.

10 So my question to you first
11 is, are you familiar with the DEA's
12 chemical handlers manual?

13 MS. MAINIGI: Objection.
14 Coaching the witness. Objection
15 to form.

16 MR. EPPICH: Object to form.

17 THE WITNESS: Yes.

18 BY MR. FARRELL:

19 Q. I'm going to show you what's
20 going to be marked as?

21 MR. FINKELSTEIN: 13.

22 MR. FARRELL: So what did
23 you say?

24 MR. FINKELSTEIN: 13. I

1 think it's 13.

2 (Document marked for
3 identification as Exhibit
4 DEA-Prevoznik-P-13.)

5 BY MR. FARRELL:

6 Q. 13? Plaintiffs' 13. And it
7 is Bates stamped
8 CAH_MDL_PRIORPROD_DEA07_01198690.

9 I'll hand that to you.

10 MR. FARRELL: I've got
11 insufficient number of copies.
12 Bonnie will be e-mailing it around
13 as well.

14 BY MR. FARRELL:

15 Q. I'll give you a moment to
16 review it. And my first question is
17 going to be is whether or not you
18 recognize this document.

19 A. Yes, I recognize it.

20 Q. What is it?

21 A. It's a manual that we put
22 together for those that are handling
23 List I chemicals.

24 Q. Is it publicly available?

1 A. Yes.

2 Q. And is this a true and
3 accurate version of the 2004 chemical
4 handler's manual published by the DEA?

5 MR. FINKELSTEIN: Scope.

6 MS. MAINIGI: Objection to
7 form.

8 THE WITNESS: Yes.

9 BY MR. FARRELL:

10 Q. Again, is this a document
11 that applies to List I chemicals,
12 including ephedrine and pseudoephedrine
13 and the chemicals used to make
14 methamphetamine?

15 A. Yes.

16 MS. MAINIGI: Objection to
17 form.

18 MR. FINKELSTEIN: Scope.

19 BY MR. FARRELL:

20 Q. Does the DEA provide
21 guidance that this document is an
22 appropriate reference point for
23 monitoring suspicious orders of
24 controlled substances that do not include

1 List I chemicals?

2 MR. EPPICH: Objection.

3 MS. MAINIGI: Objection to
4 form.

5 MR. FINKELSTEIN: Scope.

6 THE WITNESS: No.

7 BY MR. FARRELL:

8 Q. Now, I'm going to have you
9 flip to Bates stamp 01198713 which is
10 Page 19. I'm going to have you go down
11 and look first at the third full
12 paragraph.

13 MR. FINKELSTEIN: "When a
14 regulated person suspects"?

15 MR. FARRELL: Yes, sir.

16 BY MR. FARRELL:

17 Q. At the top of the page,
18 you'll see it says, "Recognizing
19 suspicious orders." And then I'm going
20 to ask you to read the first -- read the
21 paragraph that begins, "When a regulated
22 person."

23 A. "When a regulated person
24 suspects that an order may be intended

1 for illicit purposes, good practice
2 requires that every reasonable effort be
3 made to resolve those suspicions. In
4 addition to making the required reports,
5 the transaction should not be completed
6 until the customer is able to eliminate
7 the suspicions. The distributor may have
8 to forego some transactions. When DEA
9 reviews distributors' decisions, minor
10 events are not cause for government
11 action.

12 "At the same time, a
13 regulated person who fails to implement a
14 system to prevent diversion will be
15 closely scrutinized and, if warranted,
16 may be subject to civil, administrative,
17 or criminal penalties."

18 Q. So with regard to List I
19 chemicals that a registrant determines
20 that are suspicious, what guidance has
21 the DEA provided on whether or not the
22 order should be shipped?

23 MS. MAINIGI: Objection.

24 Scope. Foundation.

1 THE WITNESS: That they
2 should not do it.

3 BY MR. FARRELL:

4 Q. So is this consistent with
5 the guidance that the DEA provided to
6 registrants of controlled substances that
7 do not include List I chemicals?

8 MS. MAINIGI: Objection.
9 Vague. Timing.

10 THE WITNESS: Yes.

11 BY MR. FARRELL:

12 Q. Now, you'll see directly
13 above that, there's a reference to
14 Exhibit E. So I'm going to have you flip
15 to Page 41, which is Bates-stamped
16 01198735.

17 Now, if you look at the top
18 left-hand corner there's an appendix
19 number, Appendix E-3.

20 A. I see that.

21 Q. And when you read the
22 language of Appendix E-3, does this track
23 the language from the Reno report?

24 MS. MAINIGI: Objection.

1 Scope, form, foundation.

2 MR. FINKELSTEIN: Scope.

3 THE WITNESS: Yes.

4 BY MR. FARRELL:

5 Q. So if a registrant of --
6 that is a wholesale distributor of
7 controlled substances that do not include
8 List I chemicals is using E-3 to identify
9 suspicious orders of unusual size,
10 frequency, or pattern, is that compliant
11 with federal law?

12 MS. MAINIGI: Objection.

13 Calls for a legal conclusion.
14 Form.

15 MR. FINKELSTEIN: Calls for
16 a legal conclusion.

17 THE WITNESS: Please repeat.

18 BY MR. FARRELL:

19 Q. If a registrant that is a
20 wholesale distributor of controlled
21 substances, excluding those that contain
22 List I chemicals, is using E-3 to
23 identify suspicious orders of unusual
24 size, frequency or pattern, is that

1 compliant with federal law, according to
2 the DEA?

3 MR. EPPICH: Object to form.

4 MS. MAINIGI: Objection.

5 Calls for a legal conclusion.

6 Form.

7 THE WITNESS: No.

8 BY MR. FARRELL:

9 Q. So I'm going to make this
10 easier. I'm going to mark as the next
11 sequential exhibit, which is Plaintiffs'
12 Exhibit --

13 A. Oh, right, 14.

14 Q. I'm terrible at exhibit
15 numbers.

16 (Document marked for
17 identification as Exhibit
18 DEA-Prevoznik-P-14.)

19 BY MR. FARRELL:

20 Q. And to make it easier for
21 everybody, this is from the DEA reliance
22 materials that were circulated yesterday.
23 This is the DEA's letter dated
24 September 27th, 2006, that I'll ask you

1 to take a look at. And tell me if you
2 recognize this document.

3 A. Yes.

4 Q. What is it?

5 A. It's a letter that DEA sent
6 to the distributors, registrants, by
7 Joe -- by Joe Rannazzisi who was the head
8 of the diversion program of DEA, it's
9 dated September 27th, 2006.

10 Q. Is this a true and accurate
11 copy of the letter sent by the DEA to all
12 registrants in the chain of distribution
13 of controlled substances?

14 A. Yes.

15 Q. Can you verify and validate
16 that this letter was sent to every
17 wholesale distributor and manufacturer
18 that sells or distributes controlled
19 substances and are registered with the
20 DEA?

21 MR. STEPHENS: Object to
22 form.

23 MR. EPPICH: Object to form.
24 Objection. Foundation.

1 MR. O'CONNOR: Objection to
2 form.

3 MS. MAINIGI: Objection.

4 THE WITNESS: There were
5 actually two mailings of this.
6 This was one, and then there was
7 one in February. So it did go out
8 to all of them.

9 BY MR. FARRELL:

10 Q. So did they go out to all --
11 let me back up.

12 What was the purpose of the
13 February letter?

14 A. It was the same. It was the
15 same letter, but to make sure that all
16 the wholesalers got it.

17 Q. So the same letter was sent
18 twice?

19 A. Yes.

20 Q. And to the DEA's knowledge,
21 was there a shortcoming on the first
22 distribution of the letter, or why did
23 you send it out a second time?

24 MS. MAINIGI: Object to

1 form.

2 THE WITNESS: I'm not sure.

3 BY MR. FARRELL:

4 Q. But you know it was sent out
5 twice?

6 A. Yes.

7 Q. Can you validate and affirm
8 that the DEA sent this letter to every
9 wholesale distributor of prescription
10 opioids that are registered with the DEA?

11 MS. MAINIGI: Objection.

12 Scope, form, foundation.

13 MR. EPPICH: Objection to
14 form.

15 THE WITNESS: Back at this
16 time?

17 BY MR. FARRELL:

18 Q. Yes.

19 A. Yes.

20 Q. What about to manufacturers?

21 A. This did not go to the
22 manufacturers.

23 Q. Just to the distributors?

24 A. Correct.

1 Q. So without belaboring the
2 point in going through this, is it the
3 DEA's position that anything in that
4 letter is a new rule?

5 MS. MAINIGI: Objection.
6 Form.

7 MR. FINKELSTEIN: Vague.

8 THE WITNESS: No.

9 BY MR. FARRELL:

10 Q. I'm going to ask you the
11 same questions. I'm going to have
12 marked -- the 2007 letter that's in my
13 book from reliance materials is just one
14 page.

15 So I'm going to have marked
16 as the next sequential exhibit, which is
17 Plaintiffs' 15.

18 (Document marked for
19 identification as Exhibit
20 DEA-Prevoznik-P-15.)

21 MR. FARRELL: Document
22 bearing Bates stamp
23 US-DEA-00022459. And I'm going to
24 hand it to you.

1 BY MR. FARRELL:

2 Q. Do you recognize this
3 document?

4 A. It's the same one that you
5 just gave me.

6 Q. I meant to give you the 2006
7 version.

8 MR. FINKELSTEIN: You did
9 give him the 2006 version.

10 MR. FARRELL: I just did it
11 again with 2006, huh?

12 MR. FINKELSTEIN: Correct.

13 BY MR. FARRELL:

14 Q. Previously been marked as
15 Exhibit 5 in yesterday's deposition. And
16 I'm going to try to find a clean copy.
17 Now, I'm going to ask you the same
18 question.

19 Is this a true and accurate
20 copy of the second Rannazzisi letter sent
21 by the DEA to wholesale distributors of
22 prescription opioids dated December 27,
23 2007?

24 A. It went to manufacturers and

1 distributors.

2 Q. This one did?

3 A. Yes.

4 Q. Is -- is this a true and
5 accurate copy of that letter?

6 A. Yes.

7 Q. Does the DEA believe that
8 there's anything in this letter that
9 constitutes a new rule?

10 A. No.

11 MS. MAINIGI: Objection to
12 form.

13 MR. FARRELL: Bear with me
14 for a second, please.

15 All right. So the next
16 thing that I'm going to show you
17 is the testimony from Cardinal
18 Health's 30(b)(6) deponent. And
19 then after we show you the video
20 clip I'm going to ask you a
21 question.

22 Go ahead and play Norris.

23 (Video clip played as
24 follows:)

1 NORRIS: This letter sets
2 forth the obligations --

3 (Video stopped.)

4 MR. FARRELL: Can you stop
5 it. Start it.

6 I'm sorry, we had a little
7 technical gaffe.

8 (Video clip played as
9 follows:)

10 MR. FARRELL: So as of
11 September 27, 2006, you
12 acknowledge that this letter sets
13 forth the obligations under the
14 Controlled Substances Act and
15 under the code of federal
16 regulations for Cardinal Health?

17 MS. MAINIGI: Objection.
18 Scope. Objection. Form.

19 THE WITNESS: As to the
20 reiteration of the reporting
21 requirement, yes.

22 Again, the shipping
23 requirement, to use short form,
24 was a new -- new idea to Cardinal

1 Health at the time they received
2 this letter. So it was not -- I
3 do not agree that that was an
4 obligation in the statute going
5 back."

6 (Video concluded.)

7 MR. FARRELL: Play the next
8 one, please.

9 MS. MAINIGI: Is there a
10 question, Mr. Farrell?

11 Just an ongoing objection to
12 just playing video from Cardinal
13 Health's 30(b)(6).

14 (Video clip played as
15 follows:)

16 MR. FARRELL: During this
17 time frame prior to 2007, did
18 Cardinal report orders as
19 potentially suspicious or
20 suspicious orders, and then still
21 send the shipments out?

22 MS. MAINIGI: Objection.
23 Time period.

24 THE WITNESS: Yes, that is

1 the direction we received from the
2 DEA. We made the reports as
3 required and there was not a
4 shipping requirement.

5 (Video concluded.)

6 BY MR. FARRELL:

7 Q. So my question to you is, is
8 did the DEA ever provide such instruction
9 to a registrant?

10 MS. MAINIGI: Outside --
11 objection. Outside the scope.
12 Objection. Form.

13 MR. EPPICH: Objection.
14 Foundation.

15 MR. FINKELSTEIN: Scope.

16 THE WITNESS: Could you
17 please repeat it?

18 BY MR. FARRELL:

19 Q. Did the DEA ever provide
20 guidance to a registrant that it could
21 report a suspicious order and then still
22 ship it?

23 MS. MAINIGI: Objection.
24 Scope. Objection. Form and

1 foundation.

2 MR. EPPICH: Scope.

3 BY MR. FARRELL:

4 Q. All right. So let me repeat
5 it.

6 Cardinal Health claims that
7 it received direction from the DEA that
8 it could report suspicious orders and
9 then still ship it.

10 Is the DEA aware of
11 providing such guidance?

12 MS. MAINIGI: Objection.
13 Scope. Objection. Form.
14 Objection. Misstates Cardinal
15 Health testimony. Vague as to
16 time.

17 THE WITNESS: Not to my
18 knowledge.

19 BY MR. FARRELL:

20 Q. Does the DEA take the
21 position that a registrant of controlled
22 substances has a duty to block shipment
23 of suspicious orders of controlled
24 substances?

1 MS. MAINIGI: Objection.

2 Form. Objection. Vague as to
3 time.

4 THE WITNESS: Can you please
5 repeat it?

6 BY MR. FARRELL:

7 Q. Does the DEA take the
8 position that a registrant of controlled
9 substances has a duty to block shipments
10 of suspicious orders?

11 MS. MAINIGI: Objection.

12 Form. Objection. Vague as to
13 time.

14 THE WITNESS: Yes.

15 BY MR. FARRELL:

16 Q. Is that now and always been
17 the law in the United States of America?

18 MS. MAINIGI: Objection.

19 Form. Outside the scope.

20 THE WITNESS: Yes.

21 BY MR. FARRELL:

22 Q. And if a registrant says
23 that it was allowed to ship suspicious
24 orders, is that -- has that ever been

1 blessed by the DEA?

2 MS. MAINIGI: Objection.

3 Form. Objection. Scope.

4 MR. FINKELSTEIN: Scope.

5 MR. EPPICH: Objection.

6 Hypothetical.

7 THE WITNESS: Please repeat

8 it.

9 BY MR. FARRELL:

10 Q. Okay. You saw the testimony
11 from Cardinal Health.

12 Do you believe the testimony
13 is accurate?

14 MS. MAINIGI: Objection.

15 Form. Objection. Scope.

16 MR. EPPICH: Objection.

17 Vague.

18 THE WITNESS: No.

19 BY MR. FARRELL:

20 Q. I apologize, I don't have --
21 I've got a copy for you. And I've got
22 a -- that I'll mark as Plaintiffs'
23 Exhibit 16.

24 (Document marked for

1 identification as Exhibit

2 DEA-Prevoznik-P-16.)

3 MR. FARRELL: And for
4 everybody's reference, I'm -- I'm
5 referring to the Novelty
6 Distributors, Inc., revocation of
7 registration, Federal Register
8 Volume 73, Number 176, dated
9 September 10, 2008.

10 I believe it was referenced
11 yesterday at some point in time.

12 BY MR. FARRELL:

13 Q. Do you recognize the form of
14 this document?

15 A. Yes.

16 Q. What is it?

17 A. It's a Federal Register of
18 notice.

19 Q. And what is the date of it?

20 A. Wednesday, September 10,
21 2008.

22 Q. Is this a publication that
23 is available to the general public?

24 A. Yes.

1 Q. Is this a true and accurate
2 copy of the revocation of registration of
3 a wholesale distributor published by the
4 Drug Enforcement Agency?

5 MS. MAINIGI: Objection.
6 Scope.

7 MR. FINKELSTEIN: Join the
8 scope objection.

9 THE WITNESS: Yes.

10 BY MR. FARRELL:

11 Q. I'm going to direct your
12 attention now to Bates -- or the page
13 Number 52699. In the top right-hand
14 corner. In the middle paragraph of the
15 middle column. And I'd ask you to read
16 aloud the highlighted section.

17 A. "Fundamental to its
18 obligation to maintain effective controls
19 against diversion, a distributor must
20 review every order and identify
21 suspicious transactions. Further, it
22 must do so prior to shipping the
23 products. Indeed, a distributor has an
24 affirmative duty to forgo a transaction

1 if, upon investigation, it is unable to
2 determine that the proposed transaction
3 is for legitimate purposes. See DEA
4 chemical handler's manual 21.

5 "Respondents procedure of
6 post-transaction review is incompatible
7 with its obligation to identify and
8 forego suspicious transactions."

9 Q. Is this consistent with the
10 guidance the DEA provided to registrants?

11 MS. MAINIGI: Objection.

12 Vague as to time period and scope.

13 THE WITNESS: Yes.

14 BY MR. FARRELL:

15 Q. Is this consistent with the
16 2006 and 2007 letters sent by the DEA,
17 authored by Joe Rannazzisi, to
18 registrants that are involved in the
19 closed system of controlled substances?

20 MS. MAINIGI: Objection to
21 form.

22 MR. FINKELSTEIN: I object
23 to the pronunciation of his name.

24 But you can answer.

1 THE WITNESS: I would
2 clarify that it went to -- the
3 first one went to distributors.
4 And the 2007 went to manufacturers
5 and distributors. So yes.

6 BY MR. FARRELL:

7 Q. Now, go to the very next
8 portion. I'm going to reference a
9 footnote.

10 A. Same page?

11 Q. No. It is 52702. It's
12 Footnote 52, I believe.

13 A. Okay. I see it.

14 Q. And over on the very last
15 thing, it says, "Moreover, field
16 personnel may approve the renewal of a
17 registration" --

18 Wait a minute.

19 It says -- can I see my copy
20 back real quick?

21 MR. FARRELL: You can take
22 that down for a second. I
23 apologize. We're running out of
24 clock, but I want to get to one

1 final point.

2 I think I'm going to ask for
3 relief to continue the deposition
4 until we get back together again.
5 Ten till 5:00.

6 MR. FINKELSTEIN: Okay.

7 MR. FARRELL: With your
8 permission, we'll adjourn until
9 Day 3.

10 MR. FINKELSTEIN: Well, we
11 will certainly adjourn. I
12 understand the parties are going
13 to demand a Day 3.

14 THE VIDEOGRAPHER: 4:50. We
15 are off the video record.

16 (Excused.)

17 (Deposition adjourned at
18 approximately 4:50 p.m.)
19
20
21
22
23
24

1
2 CERTIFICATE
3
4

5 I HEREBY CERTIFY that the
6 witness was duly sworn by me and that the
7 deposition is a true record of the
8 testimony given by the witness.

9 It was requested before
10 completion of the deposition that the
11 witness, THOMAS PREVOZNIK, have the
12 opportunity to read and sign the
13 deposition transcript.

14
15 
16 _____

17 MICHELLE L. GRAY,
18 A Registered Professional
19 Reporter, Certified Shorthand
20 Reporter, Certified Realtime
21 Reporter and Notary Public

22 Dated: April 22, 2019
23
24

25 (The foregoing certification
26 of this transcript does not apply to any
27 reproduction of the same by any means,
28 unless under the direct control and/or
29 supervision of the certifying reporter.)
30
31
32

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8 After doing so, please sign
9 the errata sheet and date it.

10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.

14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.

1
2 ACKNOWLEDGMENT OF DEPONENT

3
4 I, _____, do
5 hereby certify that I have read the
6 foregoing pages, 410 - 782, and that the
7 same is a correct transcription of the
8 answers given by me to the questions
9 therein propounded, except for the
10 corrections or changes in form or
11 substance, if any, noted in the attached
12 Errata Sheet.

13
14
15 _____
16 THOMAS PREVOZNIK

DATE

17
18
19 Subscribed and sworn
to before me this

20 _____ day of _____, 20____.

21 My commission expires: _____

22
23 _____
24 Notary Public

	LAWYER'S NOTES		
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